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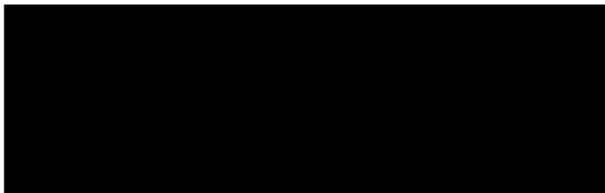
U.S. Department of Homeland Security  
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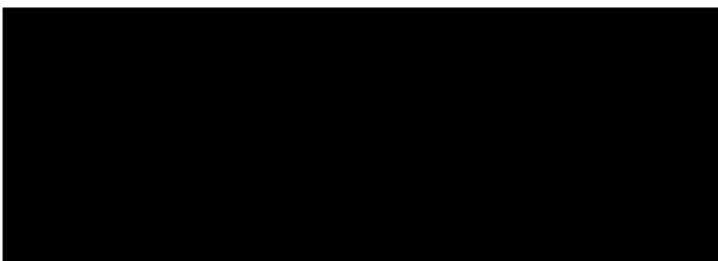


FILE: [REDACTED]  
[EAC 03 260 53269]

OFFICE: Vermont Service Center

DATE: NOV 16 2007

IN RE: Applicant:



APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Chief, Administrative Appeals Office. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The previous decision of the AAO will be affirmed and the motion to reopen will be dismissed.

The applicant claims to be a citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application, because the applicant had failed to provide the final court dispositions for an arrest appearing on his criminal record.

A subsequent appeal from the director's decision was dismissed on February 1, 2005, after the Chief of the AAO also concluded that the applicant had failed to provide the final court disposition for an arrest revealed by a fingerprint records check.

On motion to reopen, the applicant reasserts his claim of eligibility for TPS.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

A motion to reconsider must state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy ... [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The Chief dismissed the applicant's appeal because the record established that the applicant was no longer eligible because he failed to submit court dispositions for multiple misdemeanor arrests under several aliases while in the United States. The applicant's motion to reopen consists of documentation that has already been submitted to CIS, and which does not resolve the questions about arrests associated with his fingerprints.

The applicant failed to reveal his criminal history as required on his I-821, and has not provided the final dispositions for the arrests revealed by a fingerprint criminal records check. Counsel asserts that the applicant has not been arrested, however, his criminal record was discovered through an FBI fingerprint search. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The motion does not provide the final court dispositions for arrests revealed by his fingerprint analysis. As such, the motion to reopen will be dismissed.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.



**ORDER:** The motion to reopen is dismissed. The previous decision of the AAO dated January 4, 2007, is affirmed.