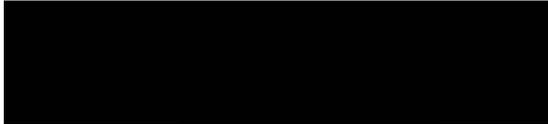


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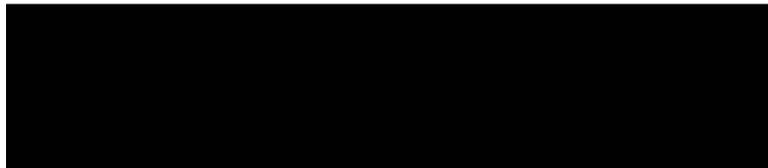
[WAC 05 055 77499]

[EAC 07 233 52411 MOTION]

OFFICE: CALIFORNIA SERVICE CENTER DATE: MAR 1 1 2008

INRE:

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: SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the application. The Administrative Appeals Office (AAO) dismissed a subsequent appeal and a motion to reopen. The matter is now before the AAO on a motion to reopen and reconsider. The previous decisions of the AAO will be affirmed and the motion to reopen and reconsider will be dismissed.

The applicant claims to be a citizen of Nicaragua 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 re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

A subsequent appeal from the director's decision was dismissed on September 26, 2006, and a motion to reopen was dismissed on July 2, 2007, after the AAO also concluded that the applicant had failed to establish that he was eligible for re-registration. The AAO noted in its September 26, 2006, decision that Federal Bureau of Investigation records indicated that the applicant had been arrested on November 24, 1997, for driving under the influence. The AAO noted in its July 2, 2007, decision that the applicant provided court documents of the [mal disposition of this offense, and that this single conviction does not make the applicant ineligible for TPS.

On motion to reopen and reconsider, 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 applicant's motion to reopen and reconsider consists of documentation relating to his arrest record. However, the primary basis for the denial of the application and the appeal was not based on his criminal record. Rather, the primary basis for these decisions was the applicant's failure to establish that he was eligible for re-registration. The motion does not address applicant's eligibility for re-registration. As such, the issue on which the underlying decisions were based has not been addressed or overcome on motion.

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 decisions of the AAO. Accordingly, the motion to reopen and reconsider will be dismissed and the previous decisions of the AAO will not be disturbed.

ORDER: The motion is dismissed. The previous decisions of the AAO dated September 26, 2006, and July 2, 2007, are affirmed.