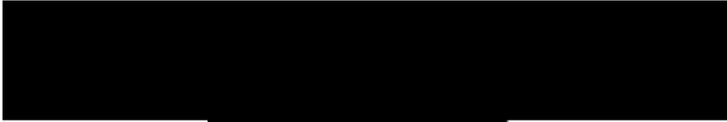




U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: JAN 03 2008
[WAC 05 196 73107]
[EAC 07 124 50435-motion]

IN RE: Applicant: [REDACTED]

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 California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the 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 re-registration application on July 23, 2005, because the applicant initial TPS application had been denied and, therefore, the applicant was not eligible to apply for re-registration for TPS.

The AAO, in dismissing the appeal on February 16, 2007, concurred with the director's findings that the applicant was not eligible to re-register for TPS and concluded that the applicant had also failed to submit evidence of his nationality and identity and sufficient evidence of his continuous residence and physical presence during the requisite periods. The AAO noted that the FBI records revealed the applicant had been arrested on January 28 2006, in Coral Gables, Florida for driving under the influence.

On motion to reopen, the applicant reiterates his claim of eligibility for TPS and submits: 1) evidence to establish his nationality and identity, namely a copy of his Honduran passport; 2) evidence in an attempt to establish his claim of residence since December 30, 1998, and physical presence since January 5, 1999, in the United States; and 3) court documentation from Dade County Circuit and County Courts reflecting that on February 12, 2007, the prosecutor entered *nolle prosequi* for the driving under the influence arrest on January 28, 2006 in Case no. [REDACTED]

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 consists of evidence to establish his nationality and identity, and documentation relating to his claim of residence since December 30, 1998, and physical presence since January 5, 1999, in the United States. However, the primary basis for the denial of the application and the dismissal of the appeal was not a failure to establish the applicant's nationality and qualifying residence and physical presence. Rather, the primary basis for these decisions was the applicant's ineligibility to file for re-registration because his initial TPS application has been denied. The motion does not address this issue. 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 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 February 16, 2007, is affirmed.