



U.S. Citizenship
and Immigration
Services

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MA

[REDACTED]

FILE:

[REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER

DATE:

[WAC 05 070 70752]
[EAC 07 116 51098-motion]

JAN 03 2008

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.

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

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.

On August 23, 2005, the Director, Texas Service Center, denied the initial TPS application, Form I-821, because the applicant had been convicted of two felonies and was ineligible for TPS. The applicant had the opportunity to file an appeal to the denial of his application, but failed to do so.

The applicant filed the current TPS application on December 6, 2004 and indicated that he was re-registering for TPS. On September 15, 2005, the Director, California Service Center, denied the application because the initial TPS application had been denied due to the applicant's two felony convictions, and therefore he was not eligible for re-registration for TPS. The applicant's appeal from the denial of this application was dismissed on February 28, 2007, as the AAO concurred with the director's findings.

On motion to reopen, the applicant reasserts his claim of eligibility for TPS and submits court documents relating to his father, [REDACTED]. The applicant asserts that his father inadvertently sent his court dispositions in response to the Notice of Decision dated September 15, 2005. The applicant claims that it is his father who has the two felonies.

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 record reflects that on July 4, 1999, the applicant was arrested by the Oakland Park Police Department in Florida for battery on a law enforcement officer, a violation of statute 784.07(2)(b), and resisting arrest with violence, a violation of statute 843.01, both 3rd degree felonies. On November 5, 1999, in the Broward County Circuit Court of the 17th Judicial Circuit, the applicant pled guilty to both felonies. The adjudication of guilt was withheld and the applicant was placed on probation for 18 months. Case no. [REDACTED]

It is noted that the applicant also submitted court documents which revealed that on May 17, 2000, he was arrested under warrant # [REDACTED]. On June 1, 2000, the applicant's probation was reinstated and modified (random urinalysis test for alcohol and drugs) and the warrant was dismissed.

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of

guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Immigration and Nationality Act.

The court disposition submitted reflects that the applicant pled guilty of the offenses and the judge ordered some form of punishment to the charges above. Therefore, the applicant has been "convicted" of the offenses for immigration purposes.

While the applicant's motion to reopen consists of documentation relating to his father's two felony convictions, the fact remains that the applicant also pled guilty to two felonies on November 5, 1999. The motion does not address applicant's felony convictions or his ineligibility to re-register for TPS. 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 28, 2007, is affirmed.