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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N. W.  
Washington, DC 20536



DEC 18 2003

File: [Redacted]

Office: Vermont Service Center Date:

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

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Cindy M. Gomez for  
Robert P. Wiemann, Director  
Administrative Appeals Office

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

The applicant is a native and citizen of Honduras who filed her application on November 1, 2000. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish she was eligible for late registration.

An appeal from the director's decision was summarily dismissed on February 14, 2002, after the Director of the AAO concluded that the applicant had failed to identify specifically any erroneous conclusion of law or statement of fact by the director. A subsequent motion to reopen was dismissed by the Director, AAO, on July 25, 2002, because the director determined that applicant had not presented any new facts or evidence and because the motion was not filed within the allotted 30-day filing period.

On this motion to reopen, filed on September 18, 2002, the applicant reasserted her claim of eligibility for TPS and submitted evidence in an attempt to establish her qualifying residence in the United States.

8 C.F.R. 103.5(a)(2) requires that a motion to reopen 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)(3) states, in pertinent part:

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)(4) states a motion that does not meet applicable requirements shall be dismissed.

The applicant's motion to reopen consists of documentation relating to her 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 was not a failure to establish qualifying residence and physical presence. Rather, the primary basis for this decision was the applicant's failure to file her Application for Temporary Resident Status within the initial registration period or to establish her eligibility for late registration. The motion to reopen does not address applicant's eligibility for late registration. As such,

the issue on which the underlying decisions were based has not been 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 petitioner has not provided any new facts or additional evidence to overcome the previous decisions of the AAO. Accordingly, the motion to reopen will be dismissed and the previous decisions of the AAO will not be disturbed.

**ORDER:** The motion to reopen is dismissed. The previous decisions of the AAO are affirmed.