



U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: 8/1/07

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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

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U.S. DEPARTMENT OF HOMELAND SECURITY
CITIZENSHIP AND IMMIGRATION SERVICES
VERMONT SERVICE CENTER
MONTPELIER, VERMONT

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

The applicant is a native and 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 failed to establish that he was eligible for late registration.

A subsequent appeal from the director's decision was dismissed on December 18, 2003, after the Director of the AAO also concluded that the applicant had failed to establish he was eligible for late registration. On motion to reopen, the applicant reasserts that he has lived in the United States since November 1998, and that his TPS application was submitted in June 2002, almost three years after the initial registration period had ended.

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 a letter reasserting his claim of continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999. However, the basis for the denial of the application and the dismissal of the appeal was not a failure to establish qualifying residence and physical presence. Rather, the primary basis for these decisions was the applicant's failure to file his Form I-821, Application for Temporary Protected Status, within the initial registration period or to establish his eligibility for late registration. The motion does not address the 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 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 denied 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 December 18, 2003, is affirmed.