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U.S. Citizenship
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FILE:



Office: TEXAS SERVICE CENTER

Date:

SEP 26 2006

[SRC 02 204 56001]

[SRC 05 099 51901, *Motion*]

IN RE:

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

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for Temporary Protected Status (TPS) was denied by the Director, Texas Service Center. A subsequent appeal was dismissed by the Director (now Chief), Administrative Appeals Office (AAO). The applicant filed a motion to reopen that was dismissed by the Director of the AAO. The matter is again now before the AAO on another motion to reopen. The motion to reopen will be dismissed and the prior decisions of the AAO will be affirmed.

The applicant states that he is a native of Nicaragua and alternately that he is a citizen of Nicaragua and 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 initial registration. The initial registration period for Nicaraguans and Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on June 19, 2002.

A subsequent appeal from the director's decision was dismissed on January 10, 2003, after the Director of the AAO also concluded that the applicant had failed to establish his eligibility for TPS.

The applicant filed a motion to reopen the decision of the AAO Director. That motion was dismissed on February 2, 2005, after the Director of the AAO determined that the motion had not been timely filed and also concluded that the applicant had not established his eligibility for TPS.

On motion to reopen, the applicant now reasserts his claim of eligibility for TPS. The applicant states that he entered the United States with inspection and has lived in the United States since 1996. He states that he did not apply for TPS during the initial registration period due to lack of information and fear of being deported. In support of the motion, the applicant submits additional evidence dated between the years 2000 and 2005, in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States.

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 documentation relating only 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 appeal 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 applicant 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.

It is noted that the Federal Bureau of Investigation (FBI) fingerprint results report pertaining to the applicant's fingerprints, reflects that on November 24, 1997, the applicant was arrested by the Metro Dade Police Department, [Florida] and charged with Driving Under the Influence (FL0130000). The record does not contain the certified final court disposition(s) and sentencing guideline(s) for any of the charge(s) against the applicant. Because any charge(s) may have bearing on the applicant's eligibility for TPS, and his admissibility, this issue must be addressed in any future proceedings.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The motion to reopen is dismissed. The previous decisions of the AAO dated January 10, 2003, and February 2, 2005, are affirmed.