U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: SEP 28 2006

[SRC 02 182 54523]
[SRC 05 098 53501, *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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application 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 an untimely motion to reopen the AAO decision. The Director of the AAO dismissed the untimely motion. The applicant filed a second motion to reopen the denial of his application that is now before the AAO. The motion will be dismissed and the previous decisions 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 initially denied the application because the applicant failed to establish he was eligible for late initial registration. The initial registration period for 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 May 21, 2002.

A subsequent appeal from the director's decision was dismissed on October 31, 2002, after the Director of the AAO also concluded that the applicant had failed to establish that he was eligible for late registration.

The applicant filed a motion to reopen the AAO Director's decision. The AAO Director dismissed that motion on February 2, 2005, after concluding that it had been untimely filed and that the applicant had failed to establish his eligibility for TPS.

The applicant now files a timely motion to reopen the denial of his application. On motion to reopen, the applicant reasserts his claim of eligibility for TPS and submits evidence 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 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 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, this motion to reopen will be dismissed and the previous decisions of the AAO will not be disturbed.

It is noted that the record contains the Federal Bureau of Investigation (FBI) fingerprint results report pertaining to the applicant's fingerprints. This report indicates that the applicant, under the name of giving his date of birth as December 10, 1983, was apprehended by the United States Border Patrol, Del Rio, Texas, on March 28, 2000, and placed in removal proceedings. This precludes a favorable finding as to the applicant's continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999.

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 October 31, 2002, and February 2, 2005, are affirmed.