



U.S. Citizenship
and Immigration
Services

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FILE:



Office: California Service Center

Date: APR 30 2007

[WAC 05 096 85921 & WAC 06 235 5008]

IN RE:

Applicant:



APPLICATION:

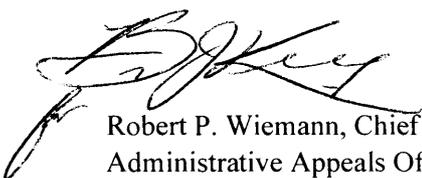
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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


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 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.

The applicant is 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.

The record reveals that the applicant filed a late initial TPS application on July 9, 2001, under CIS receipt number SRC 01 246 56451. The director, Texas Service Center, denied the application on July 19, 2002, due to abandonment, because the applicant failed to respond to a notice of intent to deny to submit evidence to establish his eligibility for late registration, and his qualifying continuous residence and continuous physical presence in the United States during the requisite time period. A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The record does not reflect that the applicant filed a motion to reopen/reconsider that decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 4, 2005, under CIS receipt number WAC 05 096 85921, and indicated that he was filing a re-registration application for TPS. The Director, California Service Center, denied that application on July 23, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

A subsequent appeal from the director's decision was dismissed on June 29, 2006, after the Director of the AAO also concluded that the applicant had failed to establish that he was eligible for re-registration. The AAO noted that the applicant had failed to submit sufficient evidence to establish that he was eligible for late initial registration, and failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods as described in 8 C.F.R. § 244.2(b) and (c). On motion to reopen, the applicant reasserts his claim of eligibility for TPS.

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 only of a statement that he would like his case reopened to give him an opportunity to be legal in this country as he has been in the United States since 1998. With the motion, in an attempt to establish his continuous residence and his continuous physical presence, the applicant submits photocopies of:

1. A State of Florida identification card, issued on September 15, 2001;
2. A Civil Action Summons, dated June 9, 2005, naming the applicant as Defendant;

3. A receipt from E&L Insurance Services, dated October 2, 2004;
4. A Temporary Driving Permit, issued on April 10, 2006, by the Florida Division of Driver Licenses;
5. Various documents, dated in 2002 through 2006, including insurance-related notices, invoices, copies of two personal checks; and,
6. Receipts, primarily generic receipts for merchandise, dated in 1998 through 2002.

There was no documentation relating to applicant's late initial registration. The primary basis for the denial of the application and the appeal was the applicant's failure to file his Application for Temporary Protected Status within the initial registration period or to establish his eligibility for late registration for TPS. The motion does not address the applicant's eligibility for late initial registration. As such, the issue on which the underlying decisions were based has not been addressed or overcome on motion.

In addition, the applicant has not submitted sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the requisite period.

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 June 29, 2006, is affirmed.