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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: APR 30 2007

[WAC 05 207 74056]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The applicant filed her initial TPS application on August 25, 2003, under CIS receipt number SRC 03 234 54999. The Director, Texas Service Center (TSC), denied that application on February 26, 2004, because the applicant failed to establish her eligibility for late registration as well as her qualifying continuous and continuous presence in the United States. On March 24, 2004, the applicant filed a motion to reopen with the TSC director which was dismissed on July 15, 2004. The applicant filed a subsequent motion to reopen on August 2, 2004, which was dismissed by the TSC director on August 9, 2004. On September 21, 2004, the applicant filed a third motion to reopen which was rejected by the TSC director on November 4, 2004, because it was filed after the prescribed timeframe.

The applicant filed the current Form I-821, on April 25, 2005, and indicated that she was re-registering for TPS.

The director denied the re-registration application 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 was dismissed by the Director, AAO, on July 20, 2006 where it was again determined that the applicant was not eligible for late initial registration. It was also found that she had failed to establish that she had continuously resided in the United States since February 13, 2001, and had been continuously physically present since March 9, 2001. This is a motion to reopen this latest AAO determination.

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 her claim of continuous residence and continuous physical presence since in the United States. However, the primary basis for the denial of the application and 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 her Application for TPS within the initial registration period or to establish her 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 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 July 20, 2006, dismissing the appeal is affirmed.