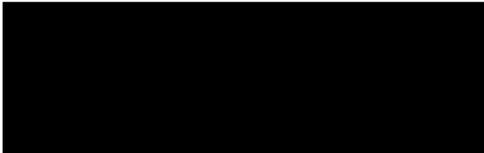




U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy



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FILE: [REDACTED]  
[WAC 05 090 75155]

Office: CALIFORNIA SERVICE CENTER

Date: JUL 06 2007

IN RE: Applicant: [REDACTED]

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

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 (CSC). A subsequent appeal was dismissed by the Chief, Administrative Appeals Office (AAO). The matter is now 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 Nicaragua 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 Form I-821, Application for Temporary Protected Status, after the initial registration period under Citizenship and Immigration Services (CIS) receipt number SRC 03 196 55390. The Director, Texas Service Center denied that application on November 3, 2003, after determining that the applicant had failed to establish he was eligible for late initial registration. The applicant filed a Form I-821 on December 29, 2004, and indicated that he was re-registering for TPS. The CSC Director denied the application on July 23, 2005. A subsequent appeal from the CSC Director's decision was dismissed on August 4, 2006, after the Director of the AAO also concluded that the applicant had failed to establish that he was eligible for re-registration and found that he had also failed to establish that he is a national or citizen of Nicaragua. On motion to reopen, the applicant reasserts his claim of eligibility for TPS and submits his National Identification Card establishing that he is a citizen and national of Nicaragua. He also submits additional evidence in an attempt to establish his continuous residence 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 primarily of documentation relating to his claim of continuous residence since December 30, 1998, and continuous physical presence since January 5, 1999, 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 establish his eligibility for re-registration. The motion does not address the applicant's eligibility for re-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 August 4, 2006 dismissing the appeal is affirmed.