

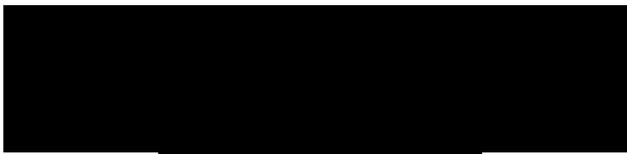
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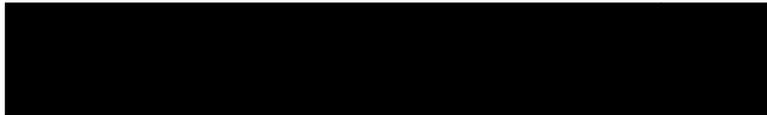


FILE: [REDACTED]
[SRC 02 185 54396]

OFFICE: Texas Service Center

DATE: JUN 14 2007

IN RE: Applicant:

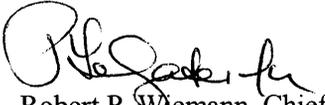


APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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, Texas Service Center (TSC). The director subsequently denied a motion to reopen and reconsider. The case is now on appeal before the Administrative Appeals Office (AAO). The appeal will be summarily 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.

On August 6, 2002, the director denied the application on the ground that its date of filing – May 28, 2002 – was nearly three years after the close of the initial registration period for TPS applicants from Honduras on August 20, 1999 – and the applicant failed to establish that he was eligible for late TPS registration under any of the criteria enumerated at 8 C.F.R. § 244.2(f)(2). The applicant filed a Form I-290B, Notice of Appeal to the [AAO], on January 10, 2003 – long after the 33-day appeal period prescribed in the regulations. The appeal was rejected by the AAO on July 3, 2003, as late filed.

On August 4, 2003, the applicant filed another Form I-290B and submitted additional documentary evidence of his presence in the United States during the years 1998-2003. The TSC Director treated the filing as a motion to reopen and denied it on September 5, 2003, on the ground that the applicant had not alleged any new facts or submitted any new evidence that would establish his eligibility for late TPS registration. The director closed by stating that the decision could not be appealed. Since the applicant's filing on August 4, 2003, sought to challenge the AAO's decision of July 3, 2003, however, the director should have forwarded the matter to the AAO as a motion to reopen or reconsider.

The applicant filed a third Form I-290B on September 16, 2003, and this time the director forwarded it to the AAO. Though it has no jurisdiction over a motion to reopen or reconsider based on the director's decision of September 5, 2003, the AAO does have jurisdiction over a motion to reopen or reconsider based on its own decision of July 3, 2003. Therefore, the AAO will treat the matter before it as a motion to reopen or reconsider its decision of July 3, 2003, in accordance with the applicant's motion of August 4, 2003, that was belatedly forwarded to the AAO on October 28, 2003.

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. *See* 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. *See* 8 C.F.R. § 103.5(a)(3).

A motion that does not meet applicable requirements shall be dismissed. *See* 8 C.F.R. § 103.5(a)(4).

The applicant's motion(s) and supporting documentation focus on his claim of continuous residence since December 30, 1998, and continuous physical presence since January 5, 1999, in the United States. The primary basis for the director's denial of the application, however, was not a failure to establish qualifying residence and physical presence. Rather, the primary basis for the decision 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. The applicant's eligibility for late registration is not addressed in the motion(s). Thus, the issue on which the underlying decision was based has not been addressed or overcome on motion.

The burden of proof in these proceedings rests solely with the applicant. *See* 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 or reconsider will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion to reopen or reconsider is dismissed.