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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



**U.S. Citizenship  
and Immigration  
Services**

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: NOV 05 2007  
[WAC 05 077 76438]

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 Vermont Service Center. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center (VSC). A subsequent appeal as 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 stated to be 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 applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number SRC 03 172 52020 after the initial registration period had closed. The Director, VSC, denied that application on February 17, 2004, after determining that the applicant had failed to establish she was eligible for late initial registration. An appeal was dismissed by the Chief, AAO, on March 13, 2007, who affirmed the VSC Director's finding and also found that the applicant had not established that she was a native or citizen of Nicaragua or that she had been continuously physically present in the United States since January 5, 1999 or that she had continuously resided in this country since December 30, 1998. The applicant filed a subsequent I-821 on December 16, 2004, under receipt number WAC 05 077 76438. The Director, VSC, denied that application on May 15, 2006, after determining that the applicant had failed to establish she was eligible for late initial registration and because she had failed to establish that she is a national of Nicaragua. An appeal was dismissed by the Chief, AAO, on March 13, 2007, who affirmed the VSC Director's findings and also determined that the applicant had not established that she had been continuously physically present in the United States since January 5, 1999 or that she had continuously resided in this country since December 30, 1998.

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 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 that she is a native or citizen of Nicaragua or that she had filed her Application for Temporary Protected Status within the initial registration period or to establish her eligibility for late registration. The motion does not address the applicant's citizenship or nationality or her eligibility for late registration. As such, the threshold issues 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 March 13, 2007, dismissing the appeal is affirmed.