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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[WAC 05 223 74183]

Office: CALIFORNIA SERVICE CENTER

Date: NOV 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

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 initial TPS application was denied by the Director, Vermont Service Center. A subsequent application for re-registration was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. 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 record reveals that the applicant filed a TPS application during the initial registration period under CIS receipt number EAC 02 252 53089. The Director, Vermont Service Center, denied that application on December 21, 2004, because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant filed an appeal on February 16, 2005. The director treated the applicant's appeal as a motion to reopen because it had been filed late. On April 4, 2005, the director dismissed the motion.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 11, 2005, and indicated that he 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 from the director's decision was dismissed on March 1, 2007, after the Director of the AAO also concluded that the applicant had failed to establish that he was eligible for re-registration. On motion to reopen, the applicant reasserted his claim of eligibility for TPS and submitted evidence in an attempt to establish his 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 has failed to state new facts or to submit affidavits or sufficient documentary evidence to support a motion to reopen. The evidence submitted does not overcome the director's reason for denial of the initial TPS application, or the re-registration application. Neither has the applicant provided any new facts or additional evidence sufficient to overcome the previous decision of the AAO.

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 1, 2007, is affirmed.