



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[WAC 06 194 50163]

OFFICE: California Service Center

DATE: NOV 07 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 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, California Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office. A subsequent motion to reopen has also been dismissed. The matter is now before the Administrative Appeals Office (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 claims to be a 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 director denied the application because the applicant failed to establish she was eligible for late registration.

A subsequent appeal from the director's decision was dismissed on December 1, 2003, as untimely. The applicant filed this I-821 application on December 24, 2004, and indicated he was re-registering for TPS. The director denied that application because the applicant's initial application had been denied and the applicant was not eligible to file a re-registration application. A subsequent appeal was denied by the Chief, AAO, on May 5, 2006, after the Chief found the applicant was not eligible for re-registration, and was not eligible to file a late initial application. A subsequent motion to reopen was dismissed by the Chief, AAO, on October 24, 2006, after the Chief found that the applicant had failed to address the basis for the denial. The application is now before the AAO again on motion.

On motion to reopen, the applicant reasserts her claim of eligibility for TPS and submits dozens of generic retail receipts in order to establish presence.

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 residence since December 30, 1998, and 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. In this case, the primary basis for the denial of the application was that the applicant's initial TPS had been denied and she was not eligible to file an annual re-registration. In addition, the basis of the initial denial was not a failure to establish her qualifying residence and presence, rather, the primary basis for these decisions was the applicant's failure to file her Application for Temporary Protected Status within the initial registration period or to establish his eligibility for late registration. The motion does not address applicant's eligibility for late registration. As such, the issue on which the underlying decisions were based has not been addressed or 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 October 24, 2006, is affirmed.