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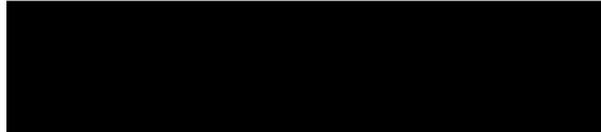
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



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

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: NOV 16 2007

[WAC 05 081 74401]

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 California 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, California Service Center (CSC). A subsequent appeal and motion to reopen were dismissed by the Chief, 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 Honduras 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 I-821, Application for Temporary Protected Status, under receipt number SRC 03 165 54391 after the initial registration period had closed. The Director, Texas Service Center (TSC), denied that application on July 18, 2003, after determining that the applicant had failed to establish he was eligible for late initial registration.

A subsequent appeal was dismissed by the Chief, AAO, on August 31, 2004, who determined that in addition to the applicant being ineligible for late initial registration, he had also failed to establish that he had continuously resided in the United States since December 30, 1998, and had been continuously physically present since January 5, 1999. A subsequent motion to reopen was dismissed as untimely by the TSC Director.

The applicant filed a subsequent Form I-821, on December 20, 2005, and indicated that he was re-registering for TPS.

The CSC Director denied the re-registration on June 15, 2005, 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 was dismissed by the Chief, AAO, on February 28, 2006 where it was again determined that the applicant was not eligible for re-registration. It was also determined that the applicant was not eligible for late initial registration and he had failed to establish that he had continuously resided in the United States since December 30, 1998, and had been continuously physically present since January 5, 1999. A following motion to reopen was dismissed by the Chief, AAO, on May 31, 2007 because it did not address the primary issue which was the applicant's eligibility for late registration.

On this motion to reopen, the applicant reasserts his claim of 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's motion to reopen consists 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 Chief, AAO's May 31, 2007 denial was that the motion did not address the primary

issue which was the applicant's eligibility for late registration. This motion does not address that issue. As such, the threshold issue on which the underlying decision that is being appealed was based has not been overcome on this second 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 decisions of the AAO will not be disturbed.

ORDER: The second motion to reopen is dismissed and the previous decisions of the AAO dismissing the appeal are affirmed.