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FILE:



Office: California Service Center

Date:

NOV 28 2007

[SRC 02 188 55463]
[SRC 03 042 52825, motion]

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.

for Robert P. Wiemann, Director
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 (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 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 record reveals that the applicant filed a late initial TPS application on May 30, 2002, under CIS receipt number SRC 02 188 55463. The Director, Texas Service Center, denied that application on July 17, 2002, because the applicant failed to submit evidence to establish eligibility for late initial registration. The record reflects that a subsequent appeal to the Administrative Appeals Office (AAO) was dismissed by the AAO Director on October 31, 2002. The applicant filed a motion to reopen/reconsider the AAO's decision on November 27, 2002, under CIS receipt number SRC 03 042 52825. The Director, Texas Service Center, dismissed the motion on December 4, 2002. The applicant filed this appeal on December 16, 2002.

Pursuant to 8 C.F.R. § 103.5(a)(ii), jurisdiction to consider a motion to reopen/reconsider lies with the official who made the latest decision in the proceeding, which in this case is the AAO. The AAO will therefore, consider the petitioner's motion to reopen and reconsider, and the materials that the petitioner subsequently submitted in connection with its appeal of the director's second denial of the petition.

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 essentially of a statement that he would like his case reopened to give him an opportunity to be legal in this country. In support of the motion, in an attempt to establish his continuous residence in the United States and his continuous physical presence, the applicant submitted various documents. However, there was no documentation relating to applicant's late initial registration. The primary basis for the denial of the application and the appeal 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 for TPS. The motion does not address the applicant's eligibility for late initial 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 31, 2002, is affirmed.