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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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*Handwritten initials*

OCT 03 2007

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date:

[WAC 05 104 79873]

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

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center (CSC). A subsequent appeal was 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 filed an initial Form I-821, Application for Temporary Protected Status, under receipt number SRC 03 154 53156 after the initial registration period had closed. The Director, Texas Service Center (TSC), denied that application on July 3, 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 June 30, 2004 and a subsequent motion to reopen was denied by the TSC Director on August 13, 2004.

The applicant filed the current Form I-821 on January 12, 2005, and indicated that he was re-registering for TPS. The CSC Director denied the re-registration application on June 13, 2005 because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration. A subsequent appeal was dismissed by the Chief, AAO, on March 26, 2007, who affirmed the CSC Director's determination. The Chief, AAO, also found that the applicant was ineligible for late initial registration, that he had failed to establish that he had continuously resided in the United States since December 30, 1998, and that he had not shown that he had been continuously physically present since January 5, 1999.

On motion to reopen, the applicant reasserts his claim of eligibility for TPS and submits evidence in an attempt to establish his continuous residence and continuous physical presence in the United States.

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 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 his eligibility for re-registration. The motion does not address the applicant's eligibility for re-registration. As such, the threshold issue 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.



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**ORDER:** The motion to reopen is dismissed. The previous decision of the AAO dated March 26, 2007 dismissing the appeal is affirmed.