



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

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **APR 16 2008**
[EAC 08 012 52845, motion]
[WAC 0612670173]

INRE: 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 Vermont 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 second motion to reopen. The second 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 Form I-821, Application for Temporary Protected Status, on February 3, 2006, under receipt number WAC 06 126 70173 after the initial registration period had ended. The CSC Director denied the application on August 17, 2006, because the applicant had **failed** to establish that he was eligible for **late** initial registration. The applicant filed an appeal from the denial decision that was dismissed by the Chief, AAO, on April 30, 2007, 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 **late** motion to reopen was dismissed by the Chief, AAO on September 13, 2007.

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 second motion does not address the applicant's eligibility for late initial registration, or prove the applicant's continuous residence or continuous physical presence during the required period. As such, the threshold issues on which the underlying decisions were based have not been overcome on motion.

The record of proceeding reflects that on November 3, 2005, an Immigration Judge in Miami, Florida, granted the applicant voluntary departure from the United States on or before March 3, 2006, with an alternate order of deportation if the applicant should fail to depart as ordered. There is no evidence in the record that the applicant departed from the United States as required.

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 motion to reopen is dismissed. The previous decisions of the AAO dated April 30, 2007 and September 13, 2007 are affirmed.