



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

M 1

FILE: [REDACTED] OFFICE: California Service Center DATE: **AUG 05 2008**
[WAC 05 308 70268]
[EAC 08 025 51397, motion]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Employment Authorization under 8 C.F.R. § 274a.12(c)(19)

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC). A subsequent appeal was rejected by the CSC director. 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 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 record reveals that the applicant filed an initial TPS application on August 4, 2005, under CIS receipt number WAC 05 308 70268, after the initial registration period for Hondurans had ended. That application was denied by the Director, California Service Center, on September 4, 2006 because the applicant did not submit sufficient evidence to establish that he was eligible for late initial registration. The director also found that the applicant had failed to establish his continuous residence and continuous physical presence in the United States during the requisite periods. A subsequent appeal of the director's decision was dismissed on August 27, 2007, after the Chief of the AAO also concluded that the applicant was not eligible for TPS.

On motion to reopen, the applicant asks CIS to reopen and reconsider his TPS application and grant him the opportunity to work legally in the United States. He further states that he has been in the United States since 1997 and that he has provided all of the requested evidence. The applicant also submits evidence in an attempt to establish his continuous residence and his continuous physical presence in the United States during the requisite periods.

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 copies of the same documentation previously submitted relating to his claim of residence since December 30, 1998, and physical presence since January 5, 1999, in the United States. However, the motion does not address the 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 August 27, 2007, is affirmed.