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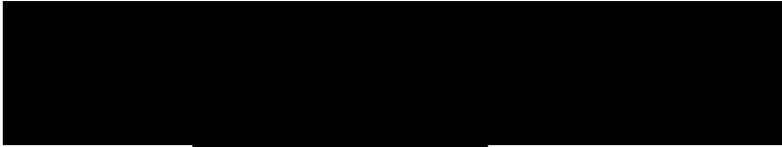
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

OFFICE: CALIFORNIA SERVICE CENTER DATE:

FEB 12 2008

[WAC 05 096 74519]
[EAC 08 006 54197-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.

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. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The applicant claims to be a 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 June 3, 2002, under Citizenship and Immigration Services (CIS) receipt number SRC0218956082. The Director, Texas Service Center, denied that application on July 25, 2002, because the applicant failed to establish late registration eligibility and failed to establish continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. The applicant's appeal from the denial of that application was rejected as untimely by the AAO on February 28, 2003.

The applicant filed the current TPS application on January 4, 2005, and indicated that he was re-registering for TPS. The Director, California Service Center, denied this re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. The applicant's appeal from the denial of this application was dismissed on July 24, 2007, as the AAO concurred with the director's findings. The AAO also determined that the applicant had failed to establish that he was eligible for late registration. The applicant subsequently filed a motion to reopen.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) requires that a motion to reopen a proceeding must be filed within 30 days of the underlying decision, and that a motion to reopen must be filed within 30 days except that failure to file a motion to reopen during this period may be excused when the applicant has demonstrated that the delay was reasonable and beyond the control of the applicant.

The AAO rendered its decision on July 24, 2007. Coupled with three days for mailing, the motion should have been filed on or before August 27, 2007. This motion, dated September 29, 2007, was received on October 4, 2007, over two months after the date of the AAO's decision.

In the instant case, the applicant has demonstrated that the delay was reasonable and beyond his control. The record reflects that the applicant had put forth a new address prior to the AAO's decision of July 24, 2007. The AAO's decision, however, was inadvertently mailed to the applicant's old address. Accordingly, the AAO will consider the motion as timely and render a decision accordingly.

On 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 residence since December 30, 1998, and physical presence since January 5, 1999, in the United States. However, the primary basis for the denial of the application and the dismissal of 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 her eligibility for re-registration. The motion does not address applicant's eligibility for re-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 July 24, 2007, is affirmed.