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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JAN 03 2008
[WAC 05 15470491]

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 **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. 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 case will **be** reopened and the appeal will again **be** dismissed.

The applicant is a native and citizen of Honduras who is applying for **Temporary** Protected Status (**TPS**) under section 244 of the Immigration and Nationality Act (the **Act**), 8 U.S.C. § 1254.

The director denied the application because the applicant **failed** to establish he was eligible for late initial registration.

A subsequent appeal from the director's decision was dismissed on May 1, 2007, after the AAO Chief also concluded that the applicant had **failed** to establish that he was eligible for late registration. 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 file his Application for Temporary Protected Status within the initial registration period or to establish his eligibility for late registration. The motion does not address the applicant's eligibility for late 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.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO dated May 1, 2007, dismissing the appeal is **affirmed**.