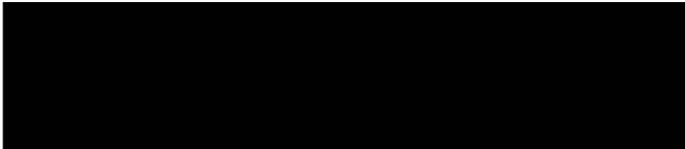




**U.S. Citizenship
and Immigration
Services**

**identifying data deleted to
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invasion of personal privacy**

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: **JUL 07 2008**

[EAC 08 088 52386, motion]

[WAC 05 228 83749]

INRE:

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.

for 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 second motion to reopen. The motion 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 director denied the application because the applicant **failed** to establish he was eligible for late initial registration. The director also found that the applicant had not established that he had continuously resided in the United States since December 30, 1998 or that he had been continuously physically present in this country since January 5, 1999.

A subsequent appeal from the director's decision was rejected as untimely on August 1, 2007, by the Chief, AAO. A motion to reopen was dismissed on December 31, 2007, after the AAO Chief concluded that the applicant had **failed** to address the issue of the untimeliness of his appeal. On this motion, 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 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 untimeliness of his appeal, his 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 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 previous decision of the AAO rejecting the untimely appeal is affirmed. The motion to reopen is dismissed.