

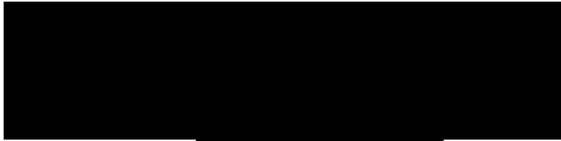


U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: California Service Center

DATE:

JUL 08 2008

[WAC 05 089 78529]

[EAC 07 11251040, motion]

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 Vermont Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, . f
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 previous decision of the AAO will be affirmed and the motion to reopen will be dismissed.

The applicant is a native and citizen of Nicaragua 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 a late initial TPS application on June 12, 2002, under Citizenship and Immigration Services (CIS) receipt number SRC 02 207 54848. The director, Texas Service Center, denied that application on August 12, 2002, because the applicant failed to establish eligibility for late initial registration. The record reflects that a subsequent appeal to the AAO was dismissed by the AAO Director, now Chief, on January 14, 2003. The applicant filed a motion to reopen the AAO's decision on February 11, 2003, under CIS receipt number SRC 03 101 50970. The AAO dismissed the motion on June 26, 2005, as the motion did not address the applicant's eligibility for late initial registration for TPS.

The applicant filed the current Form 1-821, Application for Temporary Protected Status, on December 28, 2005, under CIS receipt number WAC 05 089 78529, and indicated that she was re-registering for TPS. The Director, California Service Center, denied that application on July 23, 2005 because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. A subsequent appeal was dismissed by the Chief of the AAO on March 5, 2007, after he concluded that the applicant was not eligible for re-registration for TPS. The Chief also found that the applicant failed to submit evidence to establish her eligibility for late initial registration for TPS. The applicant has now submitted a motion to reopen.

On motion, the applicant asks CIS to reopen her case and give her the opportunity to be legal in the United States. She also states that she has been in the United States since 1990 and has provided all of the requested evidence. The applicant also submits evidence in an attempt to establish her continuous residence and continuous physical presence in the United States during the qualifying period.

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 e.F.R. § 103.5(a)(4).

The applicant's motion to reopen consists of documentation relating to her 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 primary basis 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* is affirmed.