

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

M,



FILE:



OFFICES: California Service Center DATE: **JUL 22 2008**

[WAC 05 061 70872]

[EAC 08 089 51699, *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.

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 Director, now 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 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 February 27, 2003, receipt number SRC 03 102 54099. The, Director, Texas Service Center, denied that application on December 22, 2003, because the applicant failed to establish her continuous residence and continuous physical presence in the United States during the requisite periods. A subsequent appeal from the director's decision was dismissed by the Chief of the AAO on October 7, 2004, after he concluded that the applicant had failed to establish her eligibility for TPS. The AAO also noted that the applicant has provided insufficient evidence to establish her eligibility for late registration. The record does not reflect that the applicant filed a motion to reopen and reconsider.

The applicant filed the current TPS application on November 26, 2004, under CIS receipt number WAC 05 061 70872, and indicated that she was re-registering for TPS. The Director, California Service Center, denied the re-registration 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. On August 23, 2005, the applicant submitted an appeal from the director's decision which was dismissed by the Chief of the AAO on January 3, 2008. The applicant has now submitted a motion to reopen.

On motion, the applicant asks CIS to reopen and reconsider her TPS application and grant her the opportunity to work legally in the United States. She further states that she has been in the United States since 1998 and that she has provided all of the requested evidence. The applicant submits documentation in support of her claim.

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 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 issue on which the underlying decisions were based has not been addressed or overcome on motion.

Beyond the decision of the director, the record indicated that the applicant was apprehended by the United States Border Patrol near Eagle Pass, Texas on July 27, 2002, therefore, she cannot satisfy the continuous

residence and continuous physical requirements described in 8 C.F.R. §§ 244.2(b) and (c). In addition, the applicant was ordered removed from the United States *in absentia* on January 27, 2003, at San Antonio, Texas, based upon her apprehension near Eagle Pass, Texas.

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 January 3, 2008, is affirmed.