



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

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FILE:



OFFICE: California Service Center DATE: **JUN 30 2008**

[WAC 05 152 76439]

[EAC 08 125 52330, *motion*]

INRE:

Applicant:



APPLICAnON:

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 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 her TPS application on February 3, 2005, under Citizenship and Immigration Services (CIS) receipt number WAC 05 152 76439. The Director, California Service Center (CSC), denied that application on June 12, 2006, due to abandonment because the applicant failed to appear for a scheduled fingerprinting appointment. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days. On July 27, 2006, the applicant submitted an appeal of the director's decision. On October 10, 2006, the Director, CSC, denied that application after he determined that the applicant had failed to establish her eligibility for late registration. The director also found that the applicant failed to establish her continuous residence and continuous physical presence in the United States during the requisite periods. The applicant submitted an appeal of the director's decision on October 30, 2006 which was dismissed by the AAO on September 4, 2007. A subsequent motion to reopen the AAO's decision was dismissed by the AAO on February 20, 2008. The applicant has now submitted another 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 1997 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 C.F.R. § 103.5(a)(4).

The applicant's motion to reopen consists of copies of the same documentation relating to her claim of residence since December 30, 1998, and physical presence since January 5, 1999, in the United States. **In** addition, it is also noted that the applicant's Nicaraguan passports were issued to her on March 2, 2004 and May 17, 2005 in Nicaragua. Therefore, the applicant could not have satisfied the continuous residence and continuous physical presence requirements. It is further noted that the motion does not address the applicant's eligibility for late registration. As such, the issues 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.