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

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FILE:

OFFICE: Vermont Service Center

DATE:

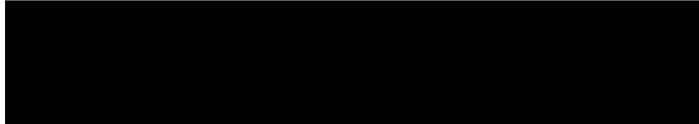
MAR 03 2008

[WAC 05 096 85921]

[EAC 07 165 52163, 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 office that originally decided your case. 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. The matter is now before the Administrative Appeals Office (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 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 his initial TPS application on July 9, 2001, under CIS receipt number SRC 01 24656451, after the initial registration period for Hondurans had ended. That application was denied due to abandonment on July 19, 2002, because the applicant failed to respond to a request for evidence to establish his eligibility for late registration, and his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. Since the application was denied due to abandonment, there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The application did not file a motion to reopen during the requisite timeframe.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 4, 2005, and indicated that he was re-registering for TPS. The director denied the re-registration application on August 12, 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 from the director's decision was dismissed on June 29, 2006, after the Chief of the AAO also concluded that the applicant was not eligible to apply for re-registration or renewal. The applicant submitted a motion to reopen which was dismissed on April 30, 2007, because the applicant failed to articulate any basis of eligibility or address the reasons for the dismissal of the application.

On motion to reopen, the applicant asks CIS to reopen his case and give him the opportunity to be legal in the United States. He also states that he has been in the United States since 1998 and has provided all of the requested evidence. The applicant also submits evidence in an attempt to establish 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 documentation relating to his claim of residence since December 30, 1998, and physical presence since January 5, 1999, in the United States. However, the primary basis for the denial of this 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 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.

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 April 30, 2007, is affirmed.