

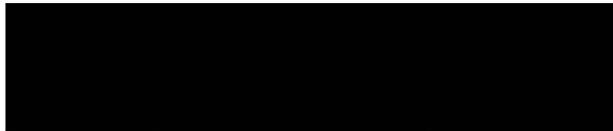
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FILE:



OFFICE: Vermont Service Center

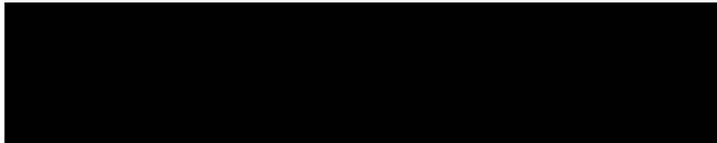
DATE: MAR 19 2008

[WAC 05 090 79019]

[EAC 07 128 50402, *motion*]

INRE:

Applicant:



APPLICATION:

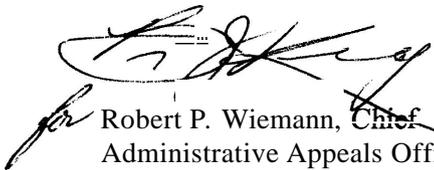
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


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. 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 a TPS application on June 4, 2002, under CIS receipt number SRC 02 193 53677, after the initial registration period for Hondurans had ended. That application was denied by the Director, Texas Service Center, on August 5, 2002 because the applicant failed to establish that he was eligible for late initial registration. The applicant filed an appeal which was dismissed by the Director, now Chief, of the AAO on January 28, 2003.

The applicant filed the current Form I-821, Application for Temporary Protected Status, under CIS receipt number WAC 05 090 79019 on December 29, 2004, and indicated that he was re-registering for TPS. The director 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. A subsequent appeal from the director's decision was dismissed on March 1, 2007, after the Chief of the AAO also concluded that the applicant was not eligible to apply for re-registration or renewal.

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 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.

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 March 1, 2007, is affirmed.