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



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

FILE:

[REDACTED]

OFFICE: California Service Center

DATE: **MAR 28 2008**

[WAC 05 106 70289]

[WAC 08 045 51277, *motion*]

INRE:

Applicant:

[REDACTED]

APPLICATION:

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

ON BEHALF OF APPLICANT:

[REDACTED]

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, C .  
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 an initial TPS application on January 6, 2005, after the initial registration period, under CIS receipt number WAC 05 106 70289. That application was denied by the Director, California Service Center, on May 30, 2006 because the applicant did not submit sufficient evidence to establish that she had continuously resided in the United States since December 30, 1998; had been continuously physically present in the United States since January 5, 1999; and was eligible for late initial registration. A subsequent appeal was dismissed on August 27, 2007 after the Chief of the AAO concluded that the applicant was not eligible for late registration as the child of a TPS-eligible alien, because she would have had to file her TPS application within 60 days of the date of her marriage, and the applicant had not done so. Conversely, the AAO found that the applicant had established her continuous residence and continuous physical presence in the United States during the requisite periods.

On motion to reopen, counsel for the applicant claims that the AAO erred when denying the TPS application because the applicant is eligible for late registration.

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 additional documentation relating to her 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 that 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 her Application for Temporary Protected Status within the initial registration period or to establish her eligibility for late registration. The motion does not present evidence of the applicant's eligibility for late registration. As such, the issue on which the underlying decisions were based has not been 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 August 27, 2007, is affirmed.