



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **MAY 0 12008**

[EAC 08 001 54202, motion]

[WAC 05 10471065]

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 and motion were dismissed by the Chief, Administrative Appeals Office (AAO). The matter is now before the AAO on a second motion to reopen. The motion to reopen will be dismissed.

The applicant is a native and citizen of Honduras who is applying for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.c. § 1254.

The director denied the application because the applicant **failed** to establish he was eligible for late initial registration.

A subsequent appeal from the director's decision was dismissed by the Chief, AAO, on March 27, 2007, who determined that in addition to the applicant being ineligible for late initial registration, he had also **failed** to establish that he had continuously resided in the United States since December 30, 1998, and had been continuously physically present since January 5, 1999. A subsequent motion to reopen was dismissed as untimely by the Chief, AAO.

On this motion to reopen, the applicant reasserts his claim of eligibility for TPS.

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 continuous residence since December 30, 1998, and continuous physical presence since January 5, 1999, in the United States. However, the primary basis for the denial of the 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 threshold 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 second motion to reopen is dismissed. The previous decision of the AAO dated March 27, 2007, dismissing the appeal is affirmed.