

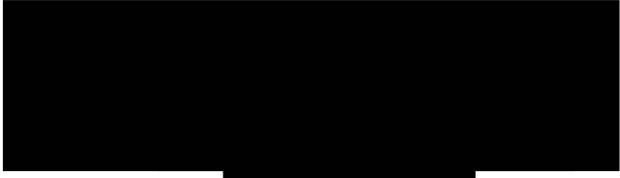
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: Vermont Service Center

Date: **MAY 062008**

[EAC 07 048 70927]
[EAC 08 039 50979, *motion*]

INRE:

Applicant:



APPLICATION:

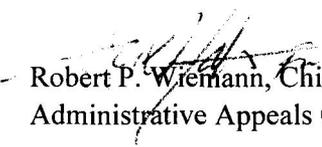
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 Vermont 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, Vermont Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. 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 late initial TPS application on May 27, 2003, under Citizenship and Immigration Services (CIS) receipt number SRC 03 16753478. The Director, Texas Service Center, denied that application on September 16, 2003, because the applicant failed to submit evidence to establish eligibility for late initial registration. The record does not reflect that the applicant filed an appeal.

The applicant filed the current Form 1-821, Application for Temporary Protected Status, on November 16, 2006, under CIS receipt number EAC 07 048 70927, and indicated that she was re-registering for TPS. The Director, Vermont Service Center, denied that application on February 7, 2007, because the applicant failed to establish eligibility for late initial registration. The director also denied TPS because the applicant failed to establish her requisite continuous residence and continuous physical presence in the United States. The record reflects that a subsequent appeal to the Administrative Appeals Office (AAO) was dismissed by the AAO Chief on August 24, 2007. The applicant filed this motion to reopen on September 28, 2007.

Pursuant to 8 C.F.R. § 103.5(a)(ii), jurisdiction to consider a motion to reopen/reconsider lies with the official who made the latest decision in the proceeding, which in this case is the AAO. The AAO will therefore, consider the petitioner's motion to reopen and reconsider, and the materials that the petitioner subsequently submitted in connection with its appeal of the director's second denial of the petition.

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 essentially of a statement that she would like her case reopened to give her an opportunity to be legal in this country. In support of the motion, in an attempt to establish her continuous residence in the United States and her continuous physical presence, the applicant submitted various documents. The documents, however, do not relate to the requisite period, and therefore, are not sufficient to establish her continuous residence and continuous physical presence in the United States. Furthermore, there was no documentation relating to applicant's late initial registration or documentation to establish her eligibility for late registration for TPS. The motion does not address the applicant's eligibility for late initial 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 August 24, 2007, is affirmed.