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

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FILE:

[WAC 05 137 72680]

[EAC 08 142 52207, motion]

OFFICE: Vermont Service Center

DATE: NOV 03 2008

IN RE:

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 (AAO). The matter is now before the 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 her initial TPS application on June 28, 2002, under receipt number SRC 02 213 55071. The Director, Texas Service Center, denied that application on September 10, 2002, after he determined that the applicant had failed to establish her eligibility for late registration. The director also found that the applicant had failed to establish her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999. The applicant submitted a subsequent appeal from the director's decision on September 24, 2002, which was summarily dismissed by the AAO on February 27, 2003, because the applicant failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(i)(v).

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 14, 2005, and indicated that she was re-registering for TPS. The Director, California Service Center, denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. On September 25, 2006, the applicant submitted an appeal from the director's decision. That appeal was dismissed by the AAO on May 8, 2007. The applicant submitted a subsequent motion to reopen the AAO's decision on July 23, 2007. The motion was, again, dismissed by the AAO on March 11, 2008. The applicant has now submitted a second motion to reopen.

On motion, the applicant asks CIS to reopen her case and give her the opportunity to be legal in the United States. She also states that she 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 her 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 copies of the same documentation relating to her claim of residence since December 30, 1998, and physical presence since January 5, 1999, in the United States. In addition, it is also noted that the applicant was apprehended by the United States Border Patrol on March 3, 1999, while attempting to enter the United States illegally at Ocotillo, California. Therefore, the applicant could not have satisfied the continuous residence and continuous physical presence requirements. It is further

noted that the motion does not address the applicant's eligibility for late registration. As such, the issues 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 is affirmed.