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

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*ML*

FILE:



Office: Vermont Service Center

Date: **OCT 31 2008**

[WAC 05 320 70003]

[EAC 08 219 50849 – motion]

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 "Robert P. 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 third 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 director denied the application on September 1, 2006, because the applicant failed to establish he was eligible for TPS late registration. The director also denied the application because the applicant failed to establish his continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999.

A subsequent appeal from the director's decision was dismissed on July 30, 2007, after the AAO also concluded that the applicant had failed to establish that he was eligible for late registration. The Chief of the AAO also concluded that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States. On August 24, 2007, the applicant filed a motion to reopen with the AAO. The Chief of the AAO reopened the case and determined that the applicant failed to establish his eligibility for TPS late registration as well as his qualifying continuous residence and continuous physical presence in the United States. The AAO dismissed that appeal on January 16, 2008.

The applicant filed a subsequent motion to reopen on February 11, 2008. The AAO dismissed that motion to reopen on July 7, 2008. The applicant now submits a third motion to reopen.

On motion to reopen, the applicant reasserts his claim of eligibility for TPS. The applicant also submits some evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

A motion to reopen 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 the 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 instant motion does not address the applicant's eligibility for TPS late registration, or establish the applicant's qualifying continuous residence and continuous physical presence in the United States.

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 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 dismissing the appeal is affirmed.