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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [WAC 05 322 70052] OFFICE: Vermont Service Center DATE: **SEP 18 2008**
[EAC 07 232 50370, *motion*]

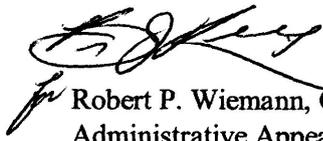
IN RE: Applicant: [Redacted]

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

ON BEHALF OF APPLICANT: 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, 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 stated to be 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 TPS application on August 17, 2005, under Citizenship and Immigration Services (CIS) receipt number WAC 05 322 70052. The Director, California Service Center, denied that application on June 28, 2006, because the applicant failed to establish her eligibility for late registration. On September 5, 2006, the applicant filed an appeal which was dismissed by the Chief of the AAO on July 6, 2007, after the AAO concluded that the applicant failed to establish her eligibility for TPS. The AAO also found that the applicant failed to submit sufficient evidence to establish her continuous residence and continuous physical presence in the United States during the requisite periods. The applicant has now submitted a 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 1997 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 CIS records reflect that the applicant entered the United States as a B-2 visitor in October 2000, and she was issued another B-2 non-immigrant visa in Tegucigalpa on February 26, 2003. 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.



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ORDER: The motion to reopen is dismissed. The previous decision of the AAO, dated July 6, 2007, is affirmed.