

U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:

Office: TEXAS SERVICE CENTER Date: NOV 07 2007

[SRC 03 173 55895]

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 Texas 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, Texas Service Center. A subsequent appeal was dismissed by the Director (now 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 service center director denied the application because the applicant failed to establish that she was eligible for late registration.

A subsequent appeal from the director's decision was dismissed on July 26, 2004, after the Director of the AAO also concluded that the applicant had failed to establish that she was eligible for late registration. On motion to reopen, the applicant reasserts her claim of eligibility for TPS and submits evidence in an attempt to establish her 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).

On motion, the applicant states that she has been living in the United States since 1998. She states that her application was late because she feared being deported. In support of the motion, the applicant resubmits documentation that had previously been entered into the record and submits additional documentation relating to her claim of residence since December 30, 1998, and 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 her Form I-821, Application for Temporary Protected Status, within the initial registration period or to establish her eligibility for late registration. The motion does not address applicant's eligibility for late registration. As such, the issue on which the underlying decisions were based has not been overcome on motion.

Beyond the decisions of the directors, the applicant has 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 record contains the applicant's national identity document issued to her in Honduras on June 8, 2000, as well as her Honduran passport issued in Honduras on December 23, 2002. The issuance of these documents outside of the United States during 2000 and 2002, preclude a favorable finding as to the applicant's continuous residence and continuous physical presence in the United States during the requisite periods. Further, much of the documentation that was submitted in an effort to establish her continuous physical presence and continuous residence in the United States has clearly been altered. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has, therefore, also failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c).

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. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will be affirmed.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO dated July 26, 2004, is affirmed.