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U.S. Citizenship
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Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: **NOV 28 2008**

[WAC 06 208 50478, *motion*]

[WAC 05 229 71419]

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 Vermont Service Center. Any further inquiry must be made to that office.

John F. Grissom, Acting 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 motion will be dismissed.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number WAC 01 185 53021. The director denied that application on June 29, 2004, due to abandonment because the applicant failed to appear to be fingerprinted or request another appointment to be fingerprinted. On August 5, 2004, the applicant filed a motion to reopen the case. The director dismissed the motion as untimely on September 17, 2004.

The applicant filed the current Form I-821 on May 17, 2005, and indicated that he was re-registering for TPS.

The director 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. A subsequent appeal was dismissed by the Chief, AAO, on June 1, 2006, who determined that in addition to the applicant being ineligible for re-registration, he had not shown that he was eligible for late initial registration and had also failed to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present since March 9, 2001.

On this motion, the applicant reasserts his claim of eligibility for TPS and argues that the fact that he did not appear for fingerprinting was the fault of CIS as he had reported his new address.

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 does not address the applicant's eligibility for re-registration, late initial registration, or prove the applicant's continuous residence or continuous physical presence during the required period. As such, the threshold issues on which the underlying decisions were based have not been 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 dismissing the appeal is affirmed.