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

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MJ

FILE:

Office: VERMONT SERVICE CENTER

Date: OCT 30 2008

[EAC 08 015 51045, *motion*]

[EAC 07 033 70863]

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, Vermont Service Center (VSC). 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 claims to be a native and citizen of Honduras who is applying for 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 SRC 03 163 54182 after the initial registration period had closed. The Director, Texas Service Center, denied that application on March 1, 2004, after that he had failed to respond to a Notice of Intent to Deny dated October 8, 2003.

A subsequent appeal from the director's decision was dismissed on October 2, 2007, after the AAO Chief affirmed that the applicant was not eligible for late initial registration. The AAO Chief also found that the applicant provided insufficient evidence to establish that he is a national or citizen of Honduras and that he had not established that he had continuously resided in the United States since December 30, 1998 or that he had been continuously physically present in this country since January 5, 1999. On motion to reopen, the applicant reasserts his claim of eligibility for TPS.¹

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 documentation relating to his claim of continuous residence since December 30, 1998, and continuous 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 his Application for Temporary Protected Status within the initial registration period or to establish his eligibility for late registration and his citizenship and nationality. The motion does not address the applicant's eligibility for late registration nor does the applicant submit evidence of his nationality and citizenship. 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.

¹ It is noted that the applicant filed a new Form I-821 on November 2, 2006 under receipt number EAC 07 033 70863 that was denied by the VSC Director on February 6, 2007.

ORDER: The motion to reopen is dismissed.