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**U.S. Citizenship
and Immigration
Services**

MI

[REDACTED]

FILE:

[REDACTED]

OFFICE: Vermont Service Center

DATE: **SEP 02 2008**

[EAC 06 200 71839]

[EAC 08 174 51618, *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, Vermont Service Center (VSC). A subsequent appeal was dismissed by the Chief of the AAO. The matter is now before the Administrative Appeals Office (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 Nicaragua 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 an initial TPS application on April 17, 2006, under Citizenship and Immigration Services (CIS) receipt number EAC 06 200 71839. The VSC director denied that application on September 28, 2006, because the applicant failed to establish that he was eligible for late registration. The director also found that the applicant had failed to establish his continuous residence in the United States since December 30, 1998. A subsequent appeal was dismissed by the Chief of the AAO on August 24, 2007, after he determined that the applicant had failed to establish his eligibility for TPS. On September 26, 2007, the applicant filed a motion to reopen which was dismissed by the AAO on May 5, 2008, because the applicant had failed to submit sufficient evidence to overcome the ground of denial of his TPS application. The applicant has now submitted a second motion to reopen.

On motion, the applicant asks CIS to reopen and reconsider his TPS application and grant him the opportunity to work legally in the United States. He further states that he has been in the United States since 1997 and that he has provided all of the requested evidence. The applicant also submits evidence in an attempt to establish his continuous residence and his continuous physical presence in the United States during the requisite periods.

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 previously submitted relating to his claim of residence since December 30, 1998, and physical presence since January 5, 1999, in the United States. However, the motion does not address the applicant's eligibility for late registration. As such, the issue 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.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO is affirmed.