U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 07 2010

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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Chief, Administrative Appeals Office (AAO). The applicant filed a motion to reopen that was subsequently dismissed by the AAO. The matter is again before the AAO on a second motion to reopen. The previous decisions of the AAO will be affirmed, and the motion will be dismissed.

The applicant is a 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 director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States.

Upon review of the record of proceeding, the AAO concurred with the director's conclusion and dismissed the appeal on August 3, 2009. The AAO also noted that the applicant had provided insufficient evidence to establish his qualifying continuous residence since December 30, 1998 and continuous physical presence from January 5, 1999 to the filing date of the TPS application. The AAO also determined that the applicant failed to submit a passport or any national identity document to establish his nationality and identity. The AAO, therefore, dismissed the appeal for these reasons as well

On the initial motion to reopen, the applicant claimed that he had not been convicted of two misdemeanors. The AAO determined that the applicant had not overcome the basis for the director's decision and the other issues listed in the initial AAO decision. On May 5, 2010, the AAO denied the motion.

On the current motion to reopen, the applicant again claimed that he was not convicted of two misdemeanors. The applicant also submits evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period as well as evidence to establish his nationality and identity.

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 that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

With the current motion to reopen, the applicant submits statements from [redacted], [redacted], and [redacted]; a Texas DWI Education Program Certificate of Completion dated October 16, 2005; a Dallas County Comprehensive Assessment and Treatment Services Certificate dated July 11, 2006; a Victim Impact Panel Certificate dated October 19, 2005; October 15, 2000, April 18, 2002 and December 8, 2004 Certificates of Birth for his children; his Honduran passport issued on October 8, 2008; another employment verification letter from [redacted]; an Apartment Lease Contract dated November 20, 2002; and a Lease Contract Renewal dated November 3, 2009. The applicant also resubmits evidence previously provided.

The passport establishes the applicant's nationality and identity. Therefore, this basis for the withdrawal of the applicant's TPS is, itself, withdrawn. [redacted], the applicant's brother, stated that the applicant came from Honduras in April 1998 and lived with him until November 2002. [redacted] stated that he has known the applicant for ten years. However, these statements have little evidentiary weight or probative value as they are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided.

[redacted] stated that he has known the applicant for 12 years and hired him as a cook for [redacted]. The letter from [redacted], director of human resources of [redacted] indicates that the applicant has been employed as a cook since April 1998. However, these statements also have little evidentiary weight. The regulation at 8 C.F.R. § 244.9(a)(2)(i) provides that letters from employers must be in affidavit form, and shall be signed and attested to by the employer under penalty of perjury. Such letters from employers must include:

(A) Alien's address(es) at the time of employment;

(B) Exact period(s) of employment;

(C) Period(s) of layoff; and

(D) Duties with the company.

[redacted] statement, while in affidavit form, fails to provide the applicant's address(es) at the time of employment, the exact period of employment; and period(s) of layoff. Similarly, the letter from [redacted] is not in affidavit form and fails to provide the applicant's address(es) at the time of employment. [redacted] indicates that the applicant would have earning statements, pay stubs and/or wage and tax statements to support her letter. However, no such evidence was provided by the applicant. The remaining evidence is all dated subsequent to the qualifying dates to establish continuous residence and continuous physical presence and is, therefore, of little or no probative value.

The applicant resubmits copies of the court documents which were previously provided. As noted in our earlier decisions, the court documents reflect that the applicant had been convicted of a violation of Texas Penal Code section 521.457, "Driving While License Suspended," and a violation of Texas Penal Code section 49.04, "Driving While Intoxicated," both Class B misdemeanors. The applicant has not provided any evidence to establish that either conviction was dismissed, was in error or resulted in a Class C misdemeanor conviction.[1]

[1] A Class C misdemeanor in the state of Texas is not considered a misdemeanor for immigration purposes as the maximum penalty is only a fine. Texas Penal Code section 12.23.

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 credible evidence to overcome the issues regarding his continuous residence, continuous physical presence and his criminal record. Accordingly, the motion to reopen will be dismissed and the previous decisions of the AAO will not be disturbed.

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