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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: California Service Center DATE:

JUL 01 2008

[WAC 05 084 75593]

[EAC 08 102 51622, motion]

IN RE:

Applicant:



APPLICATION:

Application for Employment Authorization under 8 C.F.R. § 274a.12(c)(19)

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 California 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, California Service Center. A subsequent appeal was dismissed by the Chief, Administrative Appeals Office. 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 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 record reveals that the applicant filed an initial Form I-821, Application for Temporary Protected Status, on June 24, 2002, under Citizenship and Immigration Services (CIS) receipt number SRC 02 209 54200. The Director, Texas Service Center, denied that application on August 19, 2002, due to abandonment because the applicant failed to respond to a request for evidence to establish his eligibility for late registration, and his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. As the applicant was denied due to abandonment there were no appeal rights; however, the applicant could have filed a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe

The applicant filed the current Form I-821 on December 19, 2004, under CIS receipt number WAC 05 084 75593, and indicated that he was re-registering for TPS. The Director, California Service Center, denied the re-registration application on July 23, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to re-register for TPS. On August 6, 2005, the applicant filed an appeal from the director's decision which was dismissed by the AAO on April 6, 2006. The applicant filed a motion to reopen on April 27, 2006 which was dismissed by the AAO on March 9, 2007. The applicant filed a second motion to reopen on April 4, 2007. On January 22, 2008, the AAO dismissed that motion. The applicant has now submitted a third 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 1998 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.