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

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 07 2007
[SRC 03 193 54371 as it relates to WAC 05 097 72971]

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 California 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, California Service Center. A subsequent appeal and a motion to reopen were dismissed by the Chief, Administrative Appeals Office (AAO). The matter is now before the AAO on a second motion to reopen. The motion to reopen will be dismissed.

The applicant is a native and citizen of Nicaragua 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 03 193 54371 after the initial registration period had closed. The Director, Texas Service Center, denied that application on October 15, 2003, after determining that the applicant had failed to establish she was eligible for late initial registration.

A subsequent appeal from the director's decision was rejected by the Director of the AAO because it was not filed until September 24, 2004, more than twenty-one days after the prescribed period for filing an appeal. A subsequent motion to reopen was also dismissed by the Chief of the AAO.

The applicant filed a subsequent Form I-821 on December 30, 2004, under case number WAC 05 097 72971 and indicated that she was re-registering for TPS. The director denied that application on July 23, 2005, because the applicant's prior TPS application had been denied and the applicant was not eligible to re-register for TPS.

A subsequent appeal from the director's decision was dismissed by the Chief of the AAO on May 26, 2006, after AAO also concluded that the applicant had failed to establish she was eligible for re-registration. A motion to reopen was dismissed on April 30, 2007, because the applicant had not addressed her eligibility for late initial registration and as such, the issue on which the underlying decision was based had not been addressed or overcome on motion.

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 filed on May 30, 2007, consists of documentation relating to her 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 Chief, AAO's May 26, 2006, denial of the second motion to reopen was not a failure to establish qualifying residence and physical presence. Rather, the applicant had failed to address her eligibility for late initial registration. The applicant does not address the late initial registration issue in this motion to reopen. As such, the threshold issue on which the underlying decisions that are being appealed were based has 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 appeal is dismissed. The previous decision of the AAO dated May 26, 2006 is affirmed.