



U.S. Citizenship
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FILE:

[WAC 05 081 74401]

Office: CALIFORNIA SERVICE CENTER

Date: MAY 31 2007

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 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, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on a motion to reopen. The motion 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 applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number SRC 03 165 54391 after the initial registration period had closed. The Director, Texas Service Center (TSC), denied that application on July 18, 2003, after determining that the applicant had failed to establish he was eligible for late initial registration.

A subsequent appeal was dismissed by the Director, AAO, on August 31, 2004, who determined that in addition to the applicant being ineligible for late initial registration, he had also failed to establish that he had continuously resided in the United States since December 30, 1998, and had been continuously physically present since January 5, 1999. A subsequent motion to reopen was dismissed as untimely by the Director, TSC.

The applicant filed the current Form I-821, on December 20, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. A subsequent appeal was dismissed by the Director, AAO, on February 28, 2006 where it was again determined that the applicant was not eligible for re-registration. It was also determined that the applicant was not eligible for late initial registration and that he had failed to establish that he had continuously resided in the United States since December 30, 1998, and had been continuously physically present since January 5, 1999. This is a motion to reopen this latest AAO determination.

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 his claim of continuous residence and continuous physical presence since in the United States. However, no further evidence was submitted to support his assertions. Additionally, a primary basis for the denial of the application and the appeal was not only a failure to establish qualifying residence and physical presence but also the applicant's failure to file his Application for TPS within the initial registration period or to establish his eligibility for late registration. The motion does not even address the applicant's eligibility for late registration.

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 and the previous decision of the AAO dated February 28, 2006, dismissing the appeal is affirmed.