



U.S. Citizenship
and Immigration
Services

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FILE:



Office: California Service Center

Date:

OCT 05 2007

[WAC 05 209 75014 &
WAC 07 155 50183, motion]

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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen will be dismissed.

The applicant is a native and citizen of El Salvador 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 16, 2001, under CIS receipt number WAC 01 186 55702. The Director, California Service Center, denied the application on April 20, 2004, due to abandonment because the applicant failed to respond to a January 15, 2003 notice of intent to deny to submit evidence to establish his eligibility for TPS. A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The record does not reflect that the applicant filed a motion to reopen the director's decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 27, 2005, under CIS receipt number 05 209 75014, and indicated that he was re-registering for TPS. The director denied the re-registration application on August 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to re-register for TPS. A subsequent appeal was dismissed, on May 30, 2007, after the Director of the AAO also concluded that the applicant had failed to establish that the applicant was not eligible for registration for TPS. The applicant filed this motion to reopen/reconsider the AAO dismissal.

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 states on motion that he never intended to abandon his TPS application, and was not aware that he was requested to submit additional evidence. The applicant states further his preparer evidently failed to submit the requested evidence, to his detriment. In effect, the applicant alleges ineffective assistance of his prior representative. However, the applicant does not submit any of the required documentation to support an appeal based on ineffective assistance of counsel.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19

I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). Furthermore, CIS is not responsible for inaction of the applicant's representative.

With his motion, in an attempt to establish his continuous residence and his continuous physical presence in the United States, the applicant submits 4 pay stubs from [REDACTED] Inc. for pay periods: January 13, 2001, February 25, 2001, March 11, 2001, and April 8, 2001. However, this evidence is questionable. It is noted that on both his initial Form I-765, Application of Employment Authorization, submitted in August 2003, and on his Application for Temporary Protected Status, Form I-821, dated April 27, 2005, the applicant indicated that his Social Security number was [REDACTED]. It is also noted that on his initial Application for Temporary Protected Status, Form I-821, filed on April 16, 2001, the applicant stated "N/A" where the application called for a Social Security number. However, the 4 paystubs the applicant submitted from Melrose Fabric, Inc., (which predates his initial TPS application) shows a different Social Security number. This casts doubt on whether the evidence is genuine. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record pertaining to the different Social Security numbers on the evidence he submitted. It is reasonable to expect that the applicant would be able to submit additional corroborating evidence of his continuous residence and continuous physical presence. It is noted that the applicant failed to submit any corroborating evidence. Fore the foregoing reasons, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish his continuous residence and continuous physical presence in the United States during the requisite period.

The applicant has not submitted reliable evidence to establish the requisite continuous residence and continuous physical presence. 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 dated May 30, 2007, is affirmed.