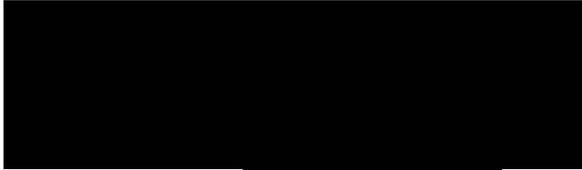


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invasion of personal privacy



U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: Vermont Service Center DATE:

APR 24 2008

[WAC 05 096 85033]

[EAC 07 217 51699, *motion*]

INRE:

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 office that originally decided your case. 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, 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 TPS application on May 16, 2002, after the initial registration period for Hondurans had closed, under CIS receipt number SRC 02 17955797. The Director, Texas Service Center (TSC), denied that application based on abandonment on September 3, 2002, because the applicant had failed to respond to a request to submit evidence establishing her eligibility for late registration. On November 14, 2002, the applicant filed a motion to reopen the director's decision. That motion was denied by the TSC director on December 6, 2002, because the motion was untimely and the applicant had failed to meet the criteria for late registration. On December 27, 2002, the applicant filed a second motion to reopen. The TSC director denied that motion on December 24, 2003, because the applicant had failed to allege new facts that would establish her eligibility for TPS. On February 3, 2004, the applicant filed a third motion to reopen. The TSC director denied that motion on February 18, 2004, because the applicant, again, had failed to allege new facts that would establish her eligibility for TPS.

The applicant filed the current Form 1-821, Application for Temporary Protected Status, on January 4, 2005, under CIS receipt number WAC 05 096 85033, and indicated that she was re-registering for TPS. The director, California Service Center (CSC), 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 apply for re-registration for TPS. The appeal of the director's decision was dismissed by the Chief of the AAO on July 24, 2006. The AAO further noted that the applicant had not submitted sufficient evidence to establish her continuous residence and her continuous physical presence in the United States during the requisite periods. The applicant appealed the AAO's decision on September 22, 2006. The CSC director rejected the untimely appeal as improperly filed because it was filed after the required 30 days from the denial decision. The applicant filed a motion to reopen which was dismissed by the Chief of the AAO on July 2, 2007.

On motion, the applicant states that she has been in the United States since 1997 and has provided all of the requested evidence. The applicant also submits evidence in an attempt to establish her continuous residence and her continuous physical presence in the United States during the qualifying period.

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 documentation relating to her claim of residence since December 30, 1998, and physical presence since January 5, 1999, in the United States. However, the primary basis for the denial of this application and the appeal was not a failure to establish **qualifying** residence and physical presence. Rather, the primary basis for these decisions was the applicant's failure to file her Application for Temporary Protected Status within the initial registration period or to establish her eligibility for late registration. 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.