



U.S. Citizenship  
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Services

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FILE:

OFFICE: CALIFORNIA SERVICE CENTER

DATE:

[WAC 05 090 76857-I-821]  
[WAC 06 261 50213-motion]  
[WAC 07 082 50107-motion]  
[EAC 07 133 50347-motion]

**JAN 03 2008**

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. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The applicant filed two motions to reopen which the director rejected as improperly filed. The matter is now before the AAO for review. The AAO hereby withdraws the director's decisions based on the director's lack of jurisdiction over the matter. *See* 8 C.F.R. § 103.5(a)(1)(ii). Upon review of the matter, the AAO enters its own decision of dismissing the motion.

The applicant claims to be a 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 his TPS application with Citizenship and Immigration Services (CIS) on June 30, 2003, after the initial registration period had expired, under CIS receipt number SRC0319154517. The Director, Texas Service Center, denied that application on November 7, 2003, because the applicant failed to establish he was eligible for late registration. The applicant's appeal from the denial of that application was dismissed on July 1, 2005, as the AAO concurred with the director's findings. The applicant filed a motion to reopen, which was dismissed as untimely filed by the AAO on August 4, 2006.

The applicant filed the current Form I-821 application, on December 29, 2004, 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 apply for re-registration for TPS. The applicant's appeal from the denial of this application was dismissed on August 4, 2006, as the AAO concurred with the director's findings. The applicant filed a timely motion to reopen; however, it was rejected as improperly filed by the Director, California Service Center, on September 27, 2006. The applicant filed another motion to reopen, which again was rejected as improperly filed by the Director, California Service Center, on February 26, 2007. The applicant subsequently filed a third motion to reopen.

The director determined that the applicant was filing an appeal and cited 8 C.F.R. §§ 103.3(a)(1)(iii) and (2)(v)(A)(1) for reasons for the rejection. The applicant, however, was filing a motion to reopen the decision of the AAO's dismissal of the appeal.

The regulation at 8 C.F.R. § 103.5(a)(1)(ii) states, in pertinent part:

The official having jurisdiction is the official who made the latest decision in the proceeding unless the affected party moves to a new jurisdiction.

Therefore, the director's decisions of September 27, 2006, and February 26, 2007, were invalid and must be withdrawn, as jurisdiction with regard to the motion remains with the AAO, not with the director. Accordingly, the AAO hereby withdraws the director's decisions and will enter its own decision.

On motion to reopen, the applicant reasserts his claim of eligibility for TPS.

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 his 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 the application and the dismissal of 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 his Application for Temporary Protected Status within the initial registration period or to establish his eligibility for late registration. The motion does not address 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 dated August 4, 2006, is affirmed.