

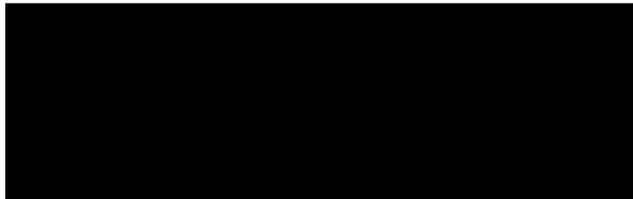
**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



FILE:

Office: California Service Center

Date: **MAR 03** 2008

[WAC 05 084 73992]

[EAC 07246 52167, *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 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 Director (now Chief), 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 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 a late initial TPS application on July 1, 2003, under Citizenship and Immigration Services (CIS) receipt number SRC 03 193 54151. The Director, Texas Service Center, denied that application on January 7, 2004, because the applicant failed to establish her eligibility for late initial registration for TPS. The applicant filed an appeal from the denial decision that was dismissed by the Director (now Chief) of the AAO on January 21, 2005. The applicant filed a subsequent motion to reopen which was dismissed by the AAO on July 31, 2007.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 23, 2004, under CIS receipt number WAC 05 084 73992, and indicated that she was re-registering for TPS. The Director, California Service Center, denied that 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 record reflects that a subsequent appeal to the Administrative Appeals Office (AAO) was dismissed by the AAO Chief on July 31, 2007. The applicant filed this motion to reopen/reconsider the AAO's decision, on August 28, 2007.

Pursuant to 8 C.F.R. § 103.5(a)(ii), jurisdiction to consider a motion to reopen/reconsider lies with the official who made the latest decision in the proceeding, which in this case is the AAO. The AAO will therefore, consider the petitioner's motion to reopen and reconsider, and the materials that the petitioner subsequently submitted in connection with its appeal of the director's second denial of the petition.

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 essentially of a statement that she would like her case reopened to give her an opportunity to be legal in this country. In support of the motion, in an attempt to establish her continuous residence in the United States and her continuous physical presence, the applicant submitted various documents. However, there was no documentation relating to applicant's late initial registration. The primary basis for the denial of the application and the initial appeal 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 for TPS. The motion does not address the applicant's eligibility for late initial registration. As such, the issue on which the underlying decisions were based has not been addressed or overcome on motion.

Also, the applicant has failed to submit sufficient evidence to establish the requisite continuous residence and continuous physical presence in the United States. It is noted that some of the evidence submitted appears to have been materially altered. For example, the applicant submitted a photocopy of a prescription from Miami Dade

Health & Rehabilitation Services, Inc. with a date that appears to have been altered to read "7/2/99." 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 evidence submitted. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish her continuous residence and continuous physical presence in the United States during the requisite period.

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 July 31, 2007, is affirmed.