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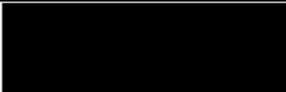
U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: Vermont Service Center DATE: NOV 03 2008

[WAC 05 104 73016]

[EAC 08 241 50280, 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 Vermont Service Center. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. Wiemann".

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC). An untimely appeal was rejected by the Director, California Service Center (CSC). A subsequent appeal was dismissed by the Chief of the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen will be dismissed and the previous decision of the AAO will be affirmed.

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 Form I-821, Application for Temporary Protected Status, on January 4, 2005, under Citizenship and Immigration Services (CIS) receipt number WAC 05 104 73016. The CSC director denied that application on August 15, 2006, after he determined that the applicant failed to establish his eligibility for late initial registration. The director also found that the applicant failed to provide sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. On September 20, 2006, the applicant filed an appeal from that decision. The CSC director rejected that appeal on October 12, 2006, after he concluded that the applicant had failed to file his appeal in a timely manner. On October 27, 2006, the applicant filed a subsequent appeal which was dismissed by the AAO on September 4, 2007. The applicant filed a motion to reopen the AAO's decision on October 10, 2007. That motion was dismissed by the AAO on July 8, 2008. The applicant has now submitted a subsequent motion to reopen the AAO's decision.

On motion, the applicant states that he has been in the United States since 1997 and has provided all of the requested evidence.

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 copies of the same documentation relating to his claim of residence since December 30, 1998, and physical presence since January 5, 1999, in the United States. In addition, it is also noted that the applicant's Honduran passport was issued to him on September 14, 2004 in Honduras. Therefore, the applicant could not have satisfied the continuous residence and continuous physical presence requirements. It is further noted that the motion does not address the applicant's eligibility for late registration. As such, the issues 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.