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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

[WAC 06 122 70045]
[EAC 08 130 51647, motion]

OFFICE: California Service Center DATE: OCT 02 2008

IN RE:

Applicant:

APPLICATION:

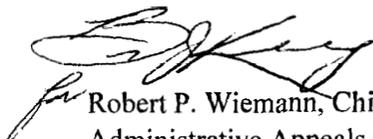
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


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 a late initial TPS application on January 25, 2006, under Citizenship and Immigration Services (CIS) receipt number WAC 06 122 70045. The director denied that application on June 6, 2006, because the applicant failed to establish eligibility for late initial registration. On August 21, 2006, the applicant submitted an appeal from the director's decision. The director rejected that appeal on August 25, 2006, because it was untimely filed. However, pursuant to 8 C.F.R. § 103.3(a)(2)(iv) and 8 C.F.R. 103.3(a)(v)(B)(2), the director lacked jurisdiction over the appeal. Furthermore, the record reflects that the denial notice was not initially mailed to the applicant at his address of record. The Service Center corrected this error and mailed the denial notice and notice of appeal to the applicant at his address of record on July 23, 2006. Therefore, the appeal was timely filed. The AAO, however, dismissed the appeal on January 16, 2008, after the AAO concluded that the applicant had failed to establish his eligibility for late registration. The AAO further noted that the applicant had also failed to establish his continuous residence and continuous physical presence in the United States during the qualifying periods. The applicant has now submitted a motion to reopen.

On motion, the applicant asks CIS to reopen his case and give him the opportunity to be legal in the United States. He also states that he 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 continuous residence and 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 copies of documents relating to his claim of residence since December 30, 1998, and physical presence since January 5, 1999, in the United States, which were previously submitted. Moreover, 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 dated January 16, 2008, is affirmed.