

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

M1



FILE:



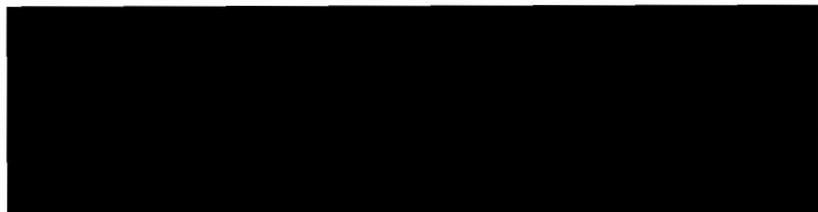
OFFICE: California Service Center DATE: OCT 02 2008

[WAC 05 074 75729]

[EAC 08 127 51266, 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 California Service Center. Any further inquiry must be made to that office.

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

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 31, 2002, under receipt number SRC 02 096 53614. The Director, Texas Service Center, denied that application on May 31, 2002, because the applicant failed to establish eligibility for late initial registration. The record reflects that on July 3, 2002, the applicant submitted a subsequent appeal from the director's decision which was dismissed by the AAO on September 18, 2002. On November 20, 2002, the applicant submitted a motion to reopen the AAO's decision. That motion was dismissed by the AAO on November 29, 2005, as it was untimely filed.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 13, 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. On August 17, 2005, the applicant submitted a subsequent appeal from the director's decision which was dismissed by the AAO on March 6, 2006, after the Chief of the AAO also concluded that the applicant had failed to establish he was eligible for re-registration or late registration. On April 2, 2007, the applicant submitted a motion to reopen the AAO's decision. That motion was dismissed by the AAO on January 16, 2008. The applicant has now submitted a second motion to reopen.

On motion, the applicant asks Citizenship and Immigration Services (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 1996 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.

In addition, it is noted that the applicant's Federal Bureau of Investigation (FBI) fingerprint results report reflects that the applicant was: (1) arrested on August 17, 2002, by the Miami Police Department, Miami, Florida, and charged with Driving Under the Influence; (2) arrested on June 15, 2004, by the Metro Dade Police Department, Dade County, Florida, and charged with BW Driving While Intoxicated; (3) arrested on October 2, 2004, by the Palm Beach County Sheriff's Office, and charged with Operate Motor Vehicle WO Valid License. The AAO notes that the final court dispositions are not in the record of proceeding. CIS must address these arrests and/or any convictions in any future proceedings.

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.