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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JAN 05 2009  
[EAC 08 168 51700, motion]  
[EAC 06 259 72184]

IN RE: Applicant: [REDACTED]

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.

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center. A subsequent appeal and motion were dismissed by the Chief, Administrative Appeals Office (AAO). The matter is now before the AAO on a second motion to reopen. The motion to reopen will be dismissed.

The applicant is a native and citizen of Honduras who is applying for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number EAC 06 259 72184 after the initial registration period had closed. The director denied that application on December 11, 2006, after determining that the applicant had failed to establish she was eligible for late initial registration, she had continuously resided in the United States since December 30, 1998, and she had been continuously physically present since January 5, 1999.

A subsequent appeal was dismissed by the Chief, AAO, on December 3, 2007. A following motion to reopen was dismissed as untimely by the Chief, AAO, on April 22, 2008.

On this motion to reopen, the applicant reasserts her 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 her claim of continuous residence since December 30, 1998, and continuous physical presence since January 5, 1999, in the United States. However, the primary basis for the denial of the application and 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 her Application for Temporary Protected Status within the initial registration period or to establish her eligibility for late registration. The motion does not address the applicant's eligibility for late registration. As such, the threshold issue on which the underlying decisions were based has not been 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 second motion to reopen is dismissed. The previous decision of the AAO dated December 3, 2007, dismissing the appeal is affirmed.