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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED] OFFICE: Vermont Service Center DATE: **MAR 05 2010**
[WAC 05 322 70047]
[EAC 08 171 53058, motion]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The previous decision of the AAO, dated July 13, 2007, 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 August 17, 2005, under Citizenship and Immigration Services (CIS) receipt number WAC 05 322 70047. The director denied the application on August 12, 2006, after determining that the applicant had failed to establish she was eligible for late initial registration. The director also found that the applicant had failed to establish her qualifying continuous residence and her continuous physical presence in the United States; and that the applicant had also failed to establish her nationality. A subsequent appeal was dismissed by the Chief of the AAO on July 13, 2007. On August 29, 2007, the applicant submitted a motion to reopen the AAO's decision. That motion was remanded by the AAO on March 28, 2008 because the applicant indicated on the appeal form that she was appealing the denial of her application for employment authorization and the AAO did not have jurisdiction. Upon review, it is determined that the applicant was actually requesting a motion on the July 13, 2007 dismissed appeal for WAC 05 322 70047. Consequently, the decision of the AAO dated March 28, 2008, is withdrawn. The applicant has now submitted a new motion to reopen the denial of her application for TPS.

On motion, the applicant requests that her case be reopened to give her the opportunity to be legal in the United States. She also states that she has been in the United States since 1997 and has provided all of the requested evidence. In addition, the applicant 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 previously-submitted documentation relating to her claim of residence since December 30, 1998, and physical presence since January 5, 1999, in the United States. However, 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, dated July 13, 2007 will not be disturbed.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO, dated July 13, 2007, is affirmed.