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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
and Immigration
Services

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[REDACTED]

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: MAY 05 2010

[WAC 05 083 70599]

[EAC 09 077 50590-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:

[REDACTED]

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 or reopen, 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. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and motion to reconsider. The motion will be dismissed.

The applicant claims to be a 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 applicant filed this TPS application on December 22, 2004, and indicated that she was re-registering for TPS. The director denied the application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.¹

The AAO, in dismissing the appeal on December 8, 2008, concurred with the director's findings. The AAO, upon a *de novo* review,² also dismissed the appeal because the applicant failed to satisfy the residence and physical requirements described in 8 C.F.R. § 244.2(b)(and (c), and failed to establish her nationality and identity.

The record contains a copy of the applicant's national identity from Honduras, which appears to have been submitted at the time her initial TPS application was filed. As such, the AAO's decision to dismiss the appeal on this basis will be withdrawn.

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).

On motion, counsel asserts, "[o]n appeal the director's decision did not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration."

¹ The initial TPS application was filed on March 29, 1999; however, it was denied by the Director, Texas Service Center, due to abandonment on September 23, 2004. No motion to reopen was filed from the denial of the initial application.

² The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp.*, *NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has long been recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

Counsel's assertion, however, has no merit. The AAO conducted a *de novo* review evaluating the relevance, credibility and probative value of the evidence in the record. The AAO determined that the applicant was eligible for late registration based on her asylum claim that was filed December 5, 1994.³ However, it was determined based on the evidence in the record, the applicant had failed to meet the requirements of continuous residence and continuous physical presence in the United States.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present in the United States since January 5, 1999.

On motion, counsel submits:

- A letter dated November 13, 2007, from [REDACTED], a medical doctor at [REDACTED], who indicated that the applicant was a patient under his care for multiple medical issues, including carpal tunnel syndrome, "which precluded her ability to work regularly in the years 1998 and 1999."
- Social Security statements dated in February 2003, 2006 and 2007, which reflected the applicant's earnings of \$7,751.00 in 1998 and \$1,169.00 in 1999.

The remaining documents submitted by counsel on motion serve to establish the applicant's residence and physical presence in the United States subsequent to filing of her initial TPS application.

The letter from [REDACTED] lacks probative value as is not accompanied by any corroborative evidence. The applicant's earnings listed on the Social Security statement do not establish that her wages were earned as of December 30, 1998 to establish continuous residence or as of January 5, 1999 to establish continuous physical presence. It is reasonable to expect the applicant to have some type of contemporaneous evidence to support these documents; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted is not sufficient to establish that the applicant satisfies the residence (since December 30, 1998) and physical presence (since January 5, 1999) requirements described in 8 C.F.R. §§ 244.2(b) and (c).

It is noted that counsel submits two employment authorization cards, which had previously belonged to the applicant's spouse, who was a TPS registrant. The submission of these cards, however, would only serve to establish that the applicant would meet the criteria for late registration

³ In a deportation hearing on December 12, 1996, the Immigration Judge ordered the matter be terminated as there was insufficient evidence to establish that the charging document (Form I-221S) was served upon the applicant. Therefore, the applicant did not have a reasonable opportunity to be present at her deportation hearing.

under 8 C.F.R. § 244.2(f)(2)(iv); they would not serve to establish her continuous residence or continuous physical presence in the United States during the requisite periods.

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 as the issue presented on motion fails to contain new facts to be proved and fails to cite precedent decisions supporting a motion to reconsider. Therefore, the motion will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion is dismissed. The previous decision of the AAO is affirmed.