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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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DATE: **MAY 23 2012** Office: VERMONT SERVICE CENTER FILE



IN RE: Applicant:



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

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center. A subsequent appeal and motion to reconsider were dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on a motion to reopen and motion to reconsider. The previous decisions of the AAO will be affirmed, and 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 director denied the application because the applicant failed to establish his: 1) eligibility for late registration; 2) continuous residence in the United States since December 30, 1998; 3) continuous physical presence in the United States since January 5, 1999; and 4) nationality and identity.

The AAO conducted appellate review on a *de novo* basis and determined that the applicant had submitted sufficient evidence to establish his nationality and identity. The AAO, however, upheld the director's other findings and dismissed the appeal on October 21, 2009. The initial motion was dismissed by the AAO on June 2, 2010, as the issues on which the underlying decision was based had not been overcome on motion.

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, the applicant asserts that the decision to dismiss his appeal is a violation of fundamental fairness and due process. The applicant states, "[m]y case was denied originally on the allegation that I did not provide proof of Nationality and continuous presence since 12/30/1998. I had provided nationality through birth certificate and national identity card." The applicant submits pay stubs for the periods ending September 15, 1999 and December 31, 1999, and a letter dated July 3, 1999, written in the Spanish language with an uncertified English translation.

As noted above, the AAO, in its decision of October 21, 2009, acknowledged that the applicant had presented sufficient evidence to establish his nationality and identity. Therefore, the applicant's assertion on this issue is moot.

The letter has no probative value or evidentiary weight as it was dated July 3, 1999 and, therefore, it does not serve to establish continuous residence since December 30, 1998 and continuous physical presence since January 5, 1999. A review of the remaining evidence

submitted on motion reveals no facts that could be considered “new” under 8 C.F.R. § 103.5(a)(2). The pay stubs were previously presented and considered in the October 21, 2009 decision of the AAO.

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, fails to establish that the decision was incorrect based on the evidence of record at the time of the initial decision and fails to cite precedent decisions supporting a motion to reconsider. Accordingly, 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 dated October 21, 2009, is affirmed.