



U.S. Citizenship
and Immigration
Services

PUBLIC COPY
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

MI



FILE: [REDACTED]
[EAC 02 197 52339]

Office: VERMONT SERVICE CENTER

Date: NOV 06 2007

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (VSC), denied the appeal. The Administrative Appeals Office (AAO) denied the appeal. The matter is now before the AAO on a motion to reopen or reconsider. The motion will be dismissed.

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

On November 8, 2004, the applicant filed an appeal of the director's denial of his application. On October 31, 2006, the AAO affirmed the director's decision and dismissed the appeal. On December 4, 2006, counsel for the applicant filed a Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO).

Counsel indicated on the Notice of Appeal that he would be sending a brief and/or evidence to the AAO within 30 days. The AAO has not received a brief or additional evidence. Therefore, the record is considered complete. On the Notice of Appeal counsel simply states the following:

The applicant has demonstrated that he was residing and physically present in the United States during the required time frame in order to qualify for TPS. The denial of his claim should be revised and he should be granted TPS as he meets all of the qualifications.

Counsel does not indicate whether he is filing a motion to reopen or a motion to reconsider. The AAO will treat the matter before it as both a motion to reopen and a motion reconsider its decision of October 31, 2006.

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. *See* 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. *See* 8 C.F.R. § 103.5(a)(3).

A motion that does not meet applicable requirements shall be dismissed. *See* 8 C.F.R. § 103.5(a)(4).

The applicant's Form I-290B focuses on his claim of qualifying continuous residence and continuous physical presence. Counsel does not state new facts and does not provide supporting affidavits or other documentary evidence. Counsel does not state a reason for reconsideration that is supported by pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or Service policy.

The burden of proof in these proceedings rests solely with the applicant. *See* 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 or reconsider will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion to reopen or reconsider is dismissed.