

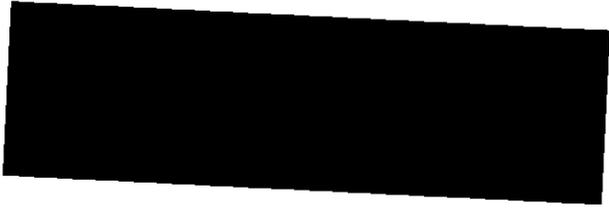
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**U.S. Department of Homeland Security**  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529 - 2090



**U.S. Citizenship  
and Immigration  
Services**

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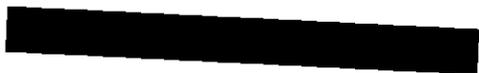


Date: **AUG 13 2012** Office: CALIFORNIA SERVICE CENTER

FILE:



IN RE: Applicant:



APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status was denied by the California Service Center. The Administrative Appeals Office (AAO) dismissed an appeal of the decision to deny the application. Counsel for the applicant filed a motion to reopen pursuant to the Northwest Immigrant Rights Project Settlement agreements (NWIRP). The matter is now before the Administrative Appeals Office on appeal. The motion will be dismissed.

The director denied the application, finding the applicant had failed to establish that his authorized stay had expired as of January 1, 1982 or that he was otherwise in an unlawful status, which was known to the government as of January 1, 1982. The AAO affirmed the director's decision.

On motion, counsel for the applicant submitted additional evidence in the form of a copy of the applicant's Social Security Administration statement of earnings. In a notice dated June 27, 2012, the AAO requested additional evidence (RFE) from the applicant to establish his continuous residence in the United States throughout the requisite period and an original copy of the applicant's Social Security Administration statement. Neither the applicant nor counsel responded to the AAO's RFE.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. According to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. See *Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991).

A motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. Rather, the "additional legal arguments" that may be raised in a motion to reconsider should flow from new law or a *de novo* legal determination reached in its decision that may not have been addressed by the party. Further, a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. See *Matter of Medrano*, 20 I&N Dec. 216, 219 (BIA 1990, 1991).

In this case, the documentation submitted on motion fails to demonstrate that the petitioner satisfies any of the categories of evidence at 8 C.F.R. § 204.5(h)(3). If the sole issue were an evaluation of whether the applicant's unauthorized residence was known to the government, the applicant would have satisfied a prerequisite for a motion to reconsider. However, the applicant failed to address the deficiencies in the record regarding his claim of continuous residence in the United States throughout the requisite period.

**ORDER:** The motion is denied. This decision constitutes a final notice of ineligibility.