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U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **AUG 01 2013**

Office: VERMONT SERVICE CENTER

[Redacted]

IN RE: Applicant:

[Redacted]

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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. The motion will be dismissed.

The applicant claims to be a citizen of El Salvador 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 eligibility for late registration, his continuous residence since February 13, 2001, and his continuous physical presence since March 9, 2001 in the United States.

The AAO, conducting its review on a *de novo* basis, determined that the applicant had submitted sufficient evidence to establish continuous residence and continuous physical presence in the United States during the requisite periods. The AAO, in dismissing the appeal on March 19, 2012, determined that the applicant was not eligible for late registration as it had not been established that his mother, who withdrew her asylum application on July 20, 2004, was currently eligible to be a TPS registrant.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Based on the plain meaning of “new,” a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.¹

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 his mother did not apply for TPS because she was a lawful permanent resident. The applicant states he did not apply for late registration because his employment authorization (under category C08) was valid until January 8, 2005. The applicant states, “all I did is try to get TPS-El Salvador before my Asylum Card expired. This is the way I understand the section [sic] 244.” The applicant submits additional documents to support a claim of continuous residence and continuous physical presence in the United States.

The submission of these documents is not necessary as it had already been determined that the applicant had established continuous residence and continuous physical presence 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. A review of the evidence submitted on motion reveals no fact that could be considered “new” under 8 C.F.R. § 103.5(a)(2) and, therefore, cannot be considered a proper basis

¹ The word “new” is defined as “1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence>” WEBSTER’S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

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NON-PRECEDENT DECISION

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for a motion to reopen. 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 March 19, 2012, is affirmed.