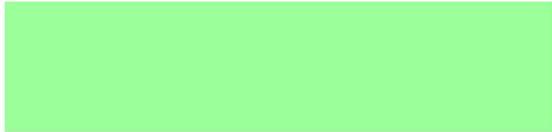


(b)(6)

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

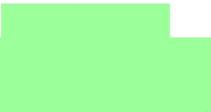


U.S. Citizenship
and Immigration
Services



DATE: JUN 28 2013

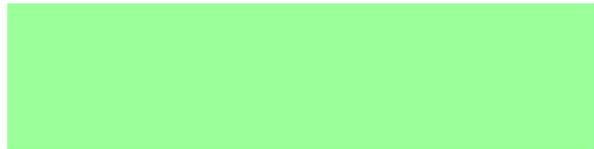
Office: VERMONT SERVICE CENTER

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

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 and a motion to reconsider. The motion will be dismissed. The order dismissing the appeal will be affirmed.

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 she was eligible for late registration, failed to establish her continuous residence since February 13, 2001, and failed to establish continuous physical presence since March 9, 2001. The AAO, in dismissing the appeal on May 15, 2012, concurred with the director's findings. The AAO, upon a *de novo* review, determined that evidence in the record only supported a claim of continuous residence and continuous physical presence in the United States from 1999 through March 10, 2004. The AAO also determined that no credible evidence had been submitted to establish that a common-law marriage existed during the initial registration period.

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 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 U.S. Citizenship and Immigration (USCIS) 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 reasserts the applicant's claim to have continuously resided in the United States since June 16, 1998 and to have been continuously physically present in the United States since November 1999. Counsel submits additional documents in an attempt to establish the applicant's continuous residence and continuous physical presence in the United States during the requisite periods.

As the applicant has already established residence and physical presence from 1999 through March 10, 2004, the additional documents submitted during that period need not be addressed on motion.

A review of the evidence, including contemporaneous documents (bank statements, money gram receipts, medical documents, notices from the Iowa Department of Human Services and a debt collecting agency, cellular billing statements and receipts) corroborates the applicant's claim of continuous residence and continuous physical presence in the United States from March 2004 through the date of filing. Coupled with the evidence previously provided, the applicant has submitted sufficient evidence to establish her continuous residence and continuous physical presence in the United States during the requisite periods. Therefore, the previous decision of the

director denying the application on these grounds and the decision of the AAO upholding the director's decision are withdrawn.

On motion, counsel reiterates that the applicant "did file during the initial registration period (See Exhibit 2)." The motion, however, does not contain any evidence to support counsel's assertion. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As previously cited in our decision of May 15 2012, the applicant's initial TPS application was filed on March 18, 2003.

On motion, counsel asserts that the applicant is eligible for late registration "as she married [REDACTED] a TPS holder in July 2003, while being the common law wife of said TPS holder for more than 10 years."

A finding of the existence of a common-law marriage or informal marriage is only justified if the evidence shows that the parties agreed to be married, that they lived together in Iowa as husband and wife, and that they have publicly represented themselves as married. All three of these requisites must exist at the same time. As previously noted in the decision's decision, the applicant listed her status as single on her initial TPS application, and on the medical documents (dated in 1999, 2000, 2000 and on May 30, 2001), from [REDACTED]. The documents submitted on motion do not establish that a common law marriage existed prior to the applicant's marriage on July 15, 2003, and reveal no facts that could be considered "new" under 8 C.F.R. § 103.5(a)(2). The applicant remains ineligible for late registration as the spouse of a TPS eligible alien. Accordingly, the motion will be dismissed and the previous decision of the AAO will not be disturbed.

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.

ORDER: The motion is dismissed.