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

(b)(6)

[redacted]

DATE: JAN 15 2014 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:

[redacted]

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A subsequent appeal and motion were dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider and a motion to reopen. The motions will be denied.

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. The AAO, in dismissing the appeal on March, 26, 2013, concurred with the director's findings. The subsequent motion was dismissed by the AAO on September 16, 2013, as the issue on which the underlying decision was based had not been overcome on motion.

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 U.S. Citizenship and Immigration Service (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 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 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 that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, counsel again asserts that the applicant was given ineffective assistance of counsel by her former attorney; that the former attorney advised the applicant not to file for TPS as she was the beneficiary of an approved Form I-140 petition and eligible for adjustment of status; and that the applicant has not filed a complaint against the former attorney because she does not know his whereabouts and attempts to contact him have been unsuccessful.

As previously mentioned in the decision of September 16, 2013, counsel did not raise this argument in earlier proceedings. It is noted that while the applicant has submitted an affidavit in support of her claim, evidence confirming that counsel or authorized representative has been notified of the incompetence claim and evidence demonstrating that a complaint, based upon the allegations, has been filed with the appropriate disciplinary authorities have not been provided. *Matter of Lozada,* 9 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F. 2d 10 (1st Cir. 1988).

Counsel resubmits copies of documents relating to the labor certification filed on behalf of the applicant on April 26, 2001. Although the Form ETA 750, Application for Employment Certification, was pending during the initial registration period for El Salvadorans, the form does

not convey eligibility for TPS.[1] Likewise, a Form I-140, Immigrant Petition for Alien Worker, alone, does not convey eligibility for TPS.[2]

The AAO reiterates that the applicant's attestation of informal marriage to her TPS registrant spouse cannot be accepted for purposes of this application as the state of Florida, where the applicant resides, does not recognize common law marriages entered into after 1968. *See* Fla. Stat. Ann. section 741.211 (2002).

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 issues presented on motions fail to contain new facts to be proved, fail 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 motions will be denied and the previous decisions of the AAO will not be disturbed.

ORDER: The motions are denied. The previous decisions of the AAO dated March 26, 2013 and September 16, 2013, are affirmed, and the application remains denied.

[1] The Form ETA 750 was approved on December 10, 2007.

[2] The record contains no evidence that a Form I-140 has been approved on behalf of the applicant.