(b)(6)

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

Date: APR 0 8 2014 Office: VERMONT SERVICE CENTER FILE:

IN RE: APPLICANT:

APPLICATION: Application to Adjust Status (Form I-485) for an Alien in U Nonimmigrant Status Pursuant to Section 245(m)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1255(m)(1)

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the Application to Register Permanent Residence or Adjust Status (Form I-485) and the Administrative Appeals Office (AAO) rejected a subsequent appeal and dismissed a motion to reopen and reconsider. The matter is again before the AAO on a second motion to reopen and reconsider. The motion will be dismissed and the underlying application will remain denied.

The applicant, who was granted U-1 nonimmigrant status, seeks to adjust his status under section 245(m)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m)(1). The director denied the Form I-485 because the applicant failed to establish his physical presence in the United States for a continuous period of at least three years since the date of admission as a nonimmigrant, that he has not unreasonably refused to provide evidence in a criminal investigation or prosecution, and that his continued presence is justified on humanitarian grounds, to ensure family unity, or is in the public interest. The applicant filed an appeal with the AAO, which was rejected as untimely filed. The applicant filed a motion to reopen and reconsider the AAO's decision. The AAO dismissed the motion determining that the applicant failed to meet either of the requirements for a motion to reopen or a motion to reconsider. The applicant timely filed the instant motion with the AAO.

The regulation at 8 C.F.R. § 103.5(a) states, in pertinent part:

* * *

> (2) *Requirements for motion to reopen.* A motion to reopen must state the new facts to be proved in the reopened proceedings and be supported by affidavits or other documentary evidence. . . .
>
> (3) *Requirements for motion to reconsider.* 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 Service policy. . . .

* * *

The applicant has failed to meet either the requirements for a motion to reopen or a motion to reconsider. In his statement in the Form I-290B, Notice of Appeal or Motion, the applicant states that he is depressed, worried about his immigration status, and he is suffering financially because he cannot work. He explains that he hired someone to help him with his immigration paperwork but he does not know if the forms were filed. The applicant also claims that the living situation in Honduras, the second poorest country in Central America, is "very dangerous," and he submits the U.S. Department of State Country Specific Information on Honduras in support of his claim. The AAO acknowledges the applicant's concerns but he does not provide any new information regarding the dismissal of his Form I-485. As such, the motion to reopen must be dismissed. *See* 8 C.F.R. § 103.5(a)(2).

The applicant also failed to establish that the previous AAO decisions were based on an incorrect application of law or United States Citizenship and Immigration Service (USCIS) policy as required. As such, the motion to reconsider must be dismissed for failing to meet applicable requirements. 8 C.F.R. § 103.5(a)(4).

In these proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(b), (d). Here, that burden has not been met as to the applicant's eligibility to adjust status under section 245(m)(1) of the Act.

ORDER: The motion is dismissed. The AAO's prior decisions, dated February 14, 2013 and October 22, 2013, are affirmed. The application remains denied.