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FILE: 

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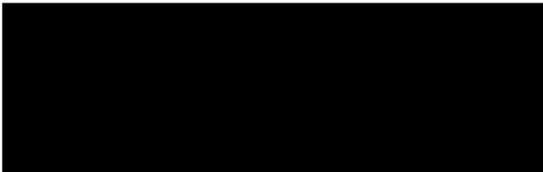
OFFICE: VERMONT SERVICE CENTER

DATE: OCT 04 2006

IN RE: Applicant: 

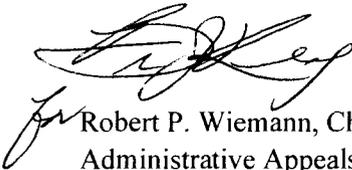
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.



Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is stated to be a native and 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 continuous residence in the United States during the requisite period.

A subsequent appeal from the director's decision was dismissed on April 20, 2004, after the Director of the AAO also concluded that the applicant had failed to establish continuous residence in the United States during the requisite period.

A subsequent motion to reopen was dismissed on November 29, 2005, after the Director of the AAO found that the affidavits, submitted by the applicant, were not supported by corroborative evidence.

On motion to reconsider, the applicant, through counsel, reasserts his claim of eligibility for TPS, submits an additional affidavit, and a plane ticket from April 2000, in an attempt to establish his qualifying residence in the United States.

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 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 Service 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).

The applicant's motion to reconsider consists of another affidavit relating to his claim of residence since February 13, 2001 in the United States. However, affidavits are not, by themselves, persuasive evidence of residence or physical presence. This affidavit has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the individual does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the time period. Additionally, the affidavit is not supported by corroborative evidence. As such, the issue on which the underlying decisions were based has not been addressed or overcome on motion.

It is noted that the applicant previously submitted receipts from Urgente Express¹; however, the receipts are for [REDACTED]. Counsel argues that the applicant also uses the name [REDACTED], but the applicant did not list [REDACTED] as another name he uses on any of his TPS applications. Additionally, his cedula and translated birth certificate state the applicant's name as [REDACTED].

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 since the applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the motion to reconsider will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion to reconsider is dismissed. The previous decision of the AAO dated April 20, 2004, is affirmed.

¹ It is noted that since none of the receipts are dated before February 13, 2001, they do not help the applicant establish continuous residence in the United States since February 13, 2001.