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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER

Date: JUN 25 2010

[REDACTED]

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

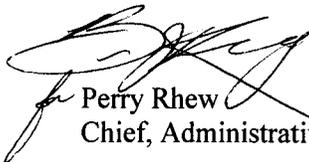
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
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 applicant filed a motion to reopen that was subsequently dismissed by the AAO. The matter is again before the AAO on a second appeal that will be treated as a motion to reopen and motion to reconsider. The previous decisions of the AAO will be affirmed, and the motion will be dismissed.

The applicant claims 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 after determining that the applicant failed to establish he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

Upon review of the record of proceeding, the AAO concurred with the director's conclusion and dismissed the appeal on January 30, 2009. The applicant filed a motion that was dismissed by the AAO on November 30, 2009, as the issue on which the underlying decision was based had not been overcome on motion

Counsel indicates on the current Form I-290B that he is filing an appeal from the AAO's decision of November 30, 2009. However, as the initial appeal was dismissed by the AAO on January 30, 2009, the Form I-290B will be treated as a motion.

On the current motion, counsel states that the decision is arbitrary and capricious, contrary to law, and against the great weight of evidence. Counsel again states that he would submit further evidence and a brief within 30 days. The regulations, however, do not provide for the extension of time to supplement the record on motion, but require documentary evidence to be submitted with the motion. 8 CFR 103.5(a)(2).

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 consists of a statement from counsel. As such, the issue on which the underlying decisions were based has not been overcome on motion.

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 and failed to cite precedent decisions supporting a motion to reconsider. Accordingly, the motion will be dismissed and the previous decisions of the AAO will not be disturbed.

ORDER: The motion is dismissed. The previous decisions of the AAO are affirmed.