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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER  
[EAC 08 206 50458]  
[EAC 10 048 50478 – motion]

Date: **MAR 30 2010**

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: Self-represented

**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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. §103.5(a)(1)(i).

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 matter is now before the AAO on a motion to reopen and motion to reconsider. The previous decision of the AAO will be affirmed, and the motion will be dismissed.

The applicant is 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.

On March 16, 2009, the director denied the application because the applicant failed to establish he had continuously resided in the United States since February 13, 2001, and been continuously physically present in the United States since March 9, 2001. The AAO, in dismissing the appeal on November 10, 2009, concurred with the director's findings

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).

The regulation at 8 C.F.R. § 103.5(a)(4) states, "[a] motion that does not meet applicable requirements shall be dismissed." As the applicant failed to cite any precedent decisions in support of its motion to reconsider, the motion will be dismissed.

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).

On motion, the applicant reasserts his claim of eligibility for TPS and submits copies of documents that were previously provided along with a new affidavit from his aunt, [REDACTED] who attests to the applicant and his parents residing in her home in February and March 2001.<sup>1</sup> The affiant indicates that the mother of the applicant is a TPS registrant. In regards to the previous affidavit from [REDACTED] who only mentioned the mother of the applicant residing with her from February 2, 2001 to March 30, 2001, the applicant asserts, in pertinent part:

As you probably realize most people apply for a benefit mostly with the main reason to be able to work legally and not necessarily because they are eager to get a status quo. That is why the letter done by my aunt, at different levels does not necessarily includes us by name, she could have said the kids, could have been any other kids; but once asked about our presence with her, then she must and does modifies her statement to fit the present need.

In regards to not attending school at the time of his entry, the applicant asserts, "[t]here are a lot of schools and most of them, that will not take you if you try to come in at this late of the year;

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<sup>1</sup> The AAO, in issuing its decision on November 10, 2009, inadvertently noted that an earlier affidavit from [REDACTED] attested to the applicant and his parent residing at her home through March 30, 2002.

their suggestions will be to wait until the new school year starts on August of 2001.” The applicant asserts because he entered the United States (February 2, 2001) during the school’s second semester, “our parents were told to hold on because the school year was going to be done in only four months.”

The applicant, however, does not provide any credible evidence to support these assertions. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

As previously noted in the decision dismissing the appeal, the remaining documents are dated subsequent to the dates required to establish continuous residence and continuous physical presence in the United States.

On motion, the applicant asserts that he and his sister both applied for TPS in 2008 and her application has been approved. The applicant states his sister used “the same evidences with minor modifications due to personal names.”

If the sister’s application was approved based on the same unsupported documentation that is contained in the applicant’s record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve an application where eligibility has not been demonstrated, merely because of a prior approval that may have been erroneous. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It must be noted that each individual case is ultimately decided on its own merits and based on its own record of proceeding.

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 new affidavit from Ms. Corado and the applicant’s statements have not overcome the previous decision of the AAO. Accordingly, the motion will be dismissed and the previous decision of the AAO will not be disturbed.

**ORDER:** The motion is dismissed. The previous decision of the AAO is affirmed.