



U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: **SEP 07 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:

[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 Vermont Service Center. 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 Vermont Service Center 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 Director, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion to reconsider will be dismissed and the previous decision of the AAO will be affirmed.

The applicant is a native and citizen of Mexico 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 determined that the applicant failed to establish she 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. The director also determined that the applicant failed to establish her nationality and identity. The director, therefore, denied the application.

Upon review of the record of proceeding, the AAO concurred with the director's conclusion and dismissed the appeal on March 29, 2010.

On motion to reconsider, the applicant reasserts her claim of eligibility for TPS but fails to submit any probative evidence in an attempt to establish her eligibility for TPS.

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 applicant's motion to reconsider consists of a statement from counsel in which he contends that an unpublished decision of the Board of Immigration Appeals (BIA) sustained an Immigration Court's decision granting TPS status to a Mexican spouse of a Honduran TPS registrant. Counsel again argues that a derivative applicant is not required to be a national of a TPS designated country. It is noted, however, that the AAO is not bound by unpublished BIA decisions. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all United States Citizenship and Immigration Services (USCIS) employees in the administration of the Act, unpublished BIA decisions are not similarly binding. The AAO does not sustain appeals where eligibility has not been established. The statute, (244(c)(1)(A) of the Act), and the regulations at 8 C.F.R. § 244.2(a), require that an alien must be a national¹ of a designated foreign state in order to be granted TPS. The country of Mexico is not a foreign state designated under section 244 of the Act. As a national of Mexico, the applicant cannot meet these requirements. *There is no waiver available, even for humanitarian reasons, of the requirements stated above.*

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 submitted any

¹ The term "national" means a person owing permanent allegiance to a state. *See* 101(a)(21) of the Act.

probative evidence for reconsideration nor cited any precedent decisions in support of a motion to reconsider, or established that the decision was incorrect based on the evidence of record at the time of the initial decision. Accordingly, the motion to reconsider 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.