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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:

[Redacted]

Date: SEP 30 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 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, [REDACTED]. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed and the previous decision of the AAO will be affirmed.

The applicant claims to be a native and citizen of [REDACTED] 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: 1) had continuously resided in the United States since February 13, 2001; 2) had been continuously physically present in the United States since March 9, 2001; and 3) was eligible for late registration. The director also determined that the applicant was ineligible for TPS because he had been convicted of two misdemeanors. 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 February 24, 2010. However, the AAO determined that the applicant had only been convicted of one misdemeanor and withdrew that basis for the director's decision.

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).

On motion, counsel submits a brief in which he claims that the director's decision was in error and that new facts are available that were not available at the time of denial. Counsel asserts that the AAO had jurisdiction to entertain a motion to reopen based on new facts and to apply equitable tolling to remedy defects contained in an initial TPS application.

On motion, counsel states, "[t]he applicant asserts that he indeed provided proof that he was physically present in the United States and residing in the U.S. on or before the required dates and has resided in the U.S. ever since." A review of the evidence submitted with the applicant's initial TPS application, however, does not support this assertion. The applicant had the opportunity to file an appeal from the denial of the initial application to dispute the director's findings; however, he failed to do so.

On motion, the applicant reasserts his claim of eligibility for TPS and submits evidence in an attempt to establish his qualifying residence in the United States or his eligibility for late registration. Specifically, the applicant submits statements from [REDACTED] the applicant's parents; from [REDACTED] the applicant's cousin; [REDACTED]

██████████ the applicant's cousin; a personal statement; employment records dated from May 1, 2002 to October 2, 2002; and copies of a 2010 Calendar for ██████████

In his statement, the applicant claims that he arrived in the United States on August 1, 2000 and never left the United States since he arrived. According to the applicant's parents, he came to the United States on August 1, 2000 and began sending them money in September 2000 to support them. ██████████ states that the applicant has been in the United States since August 1, 2000 and that he worked with him. ██████████ states that he met the applicant on August 1, 2000 and lived with the applicant at ██████████ trailer. ██████████ states that the applicant arrived in the United States on August 1, 2000 and worked with him. However, these statements have little evidentiary weight or probative value. These statements are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. ██████████ states that she has known the applicant since March 9, 2001 and that the applicant was in her employ. ██████████ also submits copies of the applicant's earnings statements dated November 26, 2000, December 23, 2000, January 13, 2001, and February 10, 2001. However, this statement 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)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of his employment. It is further noted that the affiant did not indicate the applicant's duties and exact period of employment. In fact, ██████████ indicates in her statement that she has known the applicant since March 9, 2001, but has provided employment records for a time prior to that claim. These discrepancies have not been satisfactorily explained. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

██████████ states that he was assigned to the church after the death of ██████████ Jimenez and that he can only verify his signature. ██████████ states in a letter dated March 9, 2001 that the applicant has been a member of his parish since August 1, 2000. As noted in the AAO's decision to dismiss the appeal, the statement from ██████████ 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 pastor did not explain the origin of the information to which he attests, nor did he provide the address where the applicant resided during the period of his involvement with the church.

On motion, counsel asserts that a similar case was reopened and approved at the ██████████ ██████████ If that 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.

On motion, counsel, once again, has neither addressed the finding of the applicant's ineligibility as a late registrant nor provided any evidence to establish the applicant's eligibility as a late registrant. As noted in the AAO's decision to dismiss the appeal, a TPS application filed during the initial registration period does not render an applicant eligible for subsequent late registration. As such, this issue on which the underlying decisions were based has also 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 as the issue presented on motion fails to contain new facts to be proved, fails to establish that the decision was incorrect based on the evidence of record at the time of the initial decision and fails to cite precedent decisions supporting a motion to reconsider. 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.