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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

M, I



DATE: JUN 15 2011 Office: VERMONT SERVICE CENTER FILE:

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:

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 \$630. 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 matter is now before the AAO on a motion to reopen and reconsider. 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.

The director denied the application because the applicant failed to establish he was eligible for late registration. The AAO, in dismissing the appeal on June 25, 2010, concurred with the director's findings.

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 reiterates that the applicant's former counsel failed to inform him of his eligibility for TPS during the registration period. Counsel asserts that once again he is presenting an affidavit from the applicant explaining the reasons for his failure to apply during the initial registration period. Counsel asserts, "[w]here it not for a lack of appropriate counsel, [the applicant] would have applied for Temporary Protected Status."

On motion, counsel submits an affidavit from the applicant, who asserts, in pertinent part:

According to my recollection of what took place in 1989-1990 concerning the follow-up of my TPS card with my lawyer [REDACTED] was that we had some miscommunication problems due to the fact that I did not speak English and [REDACTED] did not speak Spanish.

U.S. Citizenship and Immigration Services records reflect that the applicant had previously been granted TPS during the 1991 TPS designation for El Salvador.¹ However, that designation terminated on June 30, 1992. That earlier 1991 TPS designation is unrelated to the present 2001 TPS re-designation for which the applicant is now applying. The present registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed his application on November 27, 2009. Therefore, the applicant has failed to

¹ The applicant through his former counsel, [REDACTED] filed a Form I-765, Application for Employment Authorization on April 26, 1991, which was approved and was valid through November 5, 1991.

establish that he has met the late registration requirements under 8 C.F.R. § 244.2(f)(2). As previously noted in the AAO's decision of June 25, 2010, the applicant has failed to submit an affidavit in support of his claim, evidence confirming that former counsel has been notified of the incompetency claim, or evidence demonstrating that a complaint, based upon the allegations, has been filed with the appropriate disciplinary authorities. *See Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988).

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 and failed to cite precedent decisions supporting a motion to reconsider. Accordingly, the motion to reopen and 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 and the application will remain denied.