



U.S. Citizenship
and Immigration
Services

[REDACTED]

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DATE: Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

NOV 06 2012

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 Nebraska 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 Nebraska Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. **Do not file any motion directly with the AAO.** 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,


for 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 reopen. The motion to reopen will be dismissed.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1254. The applicant filed this TPS application on July 8, 2010, and indicated that he was filing an initial TPS application.

The director denied the application on May 30, 2011, because the applicant had failed to establish he was eligible for late initial registration for TPS, and did not establish he had continuously resided in the United States since December 30, 1998 or maintained continuous physical presence since January 5, 1999.

The record reflects that a subsequent appeal to the Administrative Appeals Office (AAO) was dismissed by the AAO on November 11, 2011. The AAO affirmed the decision of the director. The AAO noted that although the record reveals that the applicant filed an initial TPS application on May 13, 2002 under receipt SRC [REDACTED], that application was denied by the Director, Texas Service Center, on July 24, 2002, because the applicant had failed to establish his eligibility to file a late initial registration under 8 C.F.R. § 244.2(f)(2). The AAO dismissed the applicant's appeal of that application on February 4, 2003 because the applicant had failed to establish his eligibility for late initial registration.

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 asserts that the applicant has established his eligibility for late initial registration and the requisite continuous residence. Counsel states that the applicant had been a victim of "robbery and stolen identity" and could not find his documentation to establish his claim pertaining to his application in 2002. Counsel also asserts that the applicant had relied to his detriment on a preparer who made mistakes in advising the applicant and in preparing the TPS application.

We note counsel's concerns regarding the applicant's former representative. However, there is no remedy available for an applicant who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on his behalf. *See* 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against attorneys and accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir.

1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel). Furthermore, USCIS is not responsible for action, or inaction, of the applicant's representative.

The applicant's motion to reopen consists essentially of counsel's unsupported assertions. The basis for the denial of the application was the applicant's failure to establish that he was eligible for late initial registration for TPS, and that he has established his continuous residence through the requisite period. However, counsel does not submit any documentation to support his assertions or to establish the applicant's eligibility for late initial registration and his continuous residence during the requisite period. Going on record without supporting documentary evidence is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As such, the applicant has not overcome the previous decision of the AAO.

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 to overcome the previous decision of the AAO. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO, dated November 30, 2011, is affirmed.