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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **AUG 28 2013**

Office: VERMONT SERVICE CENTER

FILE: [Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254a

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A subsequent appeal was summarily dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The applicant claims to be a 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.

On May 26, 2011, the director denied the application because the applicant failed to establish that she was eligible for late registration. On March 14, 2012, the AAO summarily dismissed the appeal as the applicant had failed to provide evidence to overcome the director's finding and failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.¹ A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The applicant's motion consists of documentation relating to her claim of continuous residence and continuous physical presence in the United States during the requisite periods. However, the basis for the denial of the application and the dismissal of the appeal was not a failure to establish qualifying residence and physical presence. Rather, the sole basis for these decisions was the applicant's failure to establish her eligibility for late registration. The motion does not address applicant's eligibility for late registration. As such, the issue on which the underlying decisions were based has not been addressed or 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. 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 dated March 14, 2012, is affirmed.

¹ The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence>" WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).