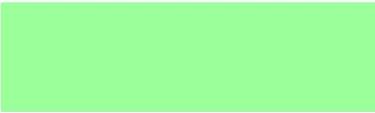


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

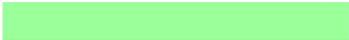


U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **MAY 20 2013** 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. § 1254a

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

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

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting 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 applicant appealed the decision of the AAO. A motion to reopen, rather than an appeal, is the proper forum in this case, pursuant to 8 C.F.R. § 103.5(a)(1)(i). The appeal, therefore, will be treated as a motion to reopen. The motion will be dismissed, and the previous decision of the AAO will be affirmed

The applicant claims to be 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: 1) he was eligible for late registration; 2) continuous residence since February 13, 2001 in the United States; and 3) continuous physical presence since March 9, 2001 in the United States. The AAO, in dismissing the appeal on August 5, 2010, concurred with the director's findings.

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.<sup>1</sup> A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, the applicant put forth a Freedom of Information Act request, which was processed on January 12, 2011.

On motion to reopen, the applicant asserts "I have never worked at any Pizza Place. My skills are related to Drywall and Painting issues. There is no record at any [redacted] facility that I had been working with them because I wouldn't." The applicant disputes the finding that he had previously claimed his aunt to be his mother. The applicant states, in part "[i]f there is fraud, I agree with it completely, but that fraud was not coming from me."

Contrary to the applicant's assertions, the AAO, in its decision, indicated that the aunt, [redacted] who added the applicant as a dependent to her asylum application, provided a birth certificate listing herself as the applicant's mother. As previously mentioned in the AAO's decision, the applicant's Form G-325A, Biographic Information, indicated residence in Los Angeles, Angeles, California and employment at [redacted]

On motion, the applicant inquires, "if my case is totally fraud as the service establishes why I had been receiving my EAD Cards since 2002 to 2007."

The fact that the applicant was erroneously issued employment authorizations is not evidence that the applicant's asylum case was legitimate. The AAO is not required to approve applications or

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<sup>1</sup> 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).

petitions where eligibility has not been demonstrated. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that U.S. Citizenship and Immigration Services or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (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 as the issue presented on motion reveals no facts that could be considered “new” under 8 C.F.R. § 103.5(a)(2) and, therefore, cannot be considered a proper basis for a motion to reopen. 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 August 5, 2010, is affirmed.