



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **OCT 25 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 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 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,

for Ron Rosenberg  
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 motion to reconsider. The motions will be denied.

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 AAO, in dismissing the appeal on March 26, 2013, concurred with the director's findings. The AAO conducted appellate review on a *de novo* basis and determined that the applicant had failed to establish his eligibility for late initial registration for TPS.

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 to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration (USCIS) 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, as on appeal, counsel for the applicant requests discretion from U.S. Citizenship and Immigration Services as to late registration. Counsel submits a brief.

On motion, as on appeal, counsel asserts that:

It is still our understanding that prior counsel submitted paperwork to the DOL that would grant [the applicant] the potential for LPR under the 2001 245i provisions. Despite exhaustive efforts we have not yet been able to obtain from DOL a copy of the approval notice that would permit our client to apply for LPR and claim the benefit of the 245i status.

In our discussion with the client, we indicated that while we shall continue to be diligent in seeking to obtain the prior DOL matters that would allow us to apply for LPR, he should be eligible to obtain TPS status and employment authorization permit as he also meets the standard for this.

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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).

Counsel's assertion on motion, as on appeal, is without support. In the dismissal, the AAO noted counsel's statements on appeal. Counsel does not provide any new argument or new evidence, nor does he identify any error in law or fact to warrant reopening or reconsideration. As stated in the dismissal of the appeal, the provisions for late registration were created in order to ensure that TPS benefits were made available to aliens who did not register during the initial registration period (March 9, 2001, through September 9, 2002) for the various circumstances specifically identified in the regulations. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Without credible evidence indicating that the applicant met any of the criteria described in 8 C.F.R. § 244.2(f)(2), the application cannot be approved for late registration under 8 C.F.R. § 244.2(f)(2) or (g). Consequently, the AAO affirmed the director's conclusion that the applicant had failed to establish his eligibility for late initial registration for TPS. An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

The applicant fails to provide any reasons for reconsideration that are supported by pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or USCIS policy. The applicant also fails to provide pertinent precedent decisions or evidence that establish that the decision was incorrect based on the evidence of record at the time of the initial decision. The motions shall be denied.

The burden of proof in these proceedings rests solely on the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden.

**ORDER:** The motions are denied. The prior decision of the AAO dismissing the appeal shall be affirmed.