



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 29 2014**

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:



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,

Ron Rosenberg
Chief, Administrative Appeals Office

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

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 she was eligible for late registration. The AAO, in dismissing the appeal on March, 26, 2013, concurred with the director's findings. The subsequent motions were dismissed by the AAO on September 16, 2013 and January 15, 2014, as the issue on which the underlying decision was based had not been overcome on motions.

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 U.S. Citizenship and Immigration Service (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 to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. Rather, the "additional legal arguments" that may be raised in a motion to reconsider should flow from new law or a de novo legal determination reached in its decision that may not have been addressed by the party. Further, a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Matter of Medrano*, 20 I&N Dec. 216, 219 (BIA 1990, 1991).

The motion to reconsider will be dismissed as it is not supported by pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy, and it does not 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 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 that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, counsel again asserts that the applicant was given ineffective assistance of counsel by her former attorney, and that the former attorney has disappeared and therefore the applicant cannot file a complaint against him. Counsel presents another affidavit from the applicant to support her claim and resubmits copies of documents that were previously provided.

As previously mentioned in the decisions of September 16, 2013 and January 15, 2014, counsel did not raise this argument in earlier proceedings. It is noted that while the applicant has submitted an affidavit in support of her claim, no evidence has been submitted indicating that an attempt has been made to notify counsel of the incompetent claim or evidence that the applicant has taken the required steps to file a complaint of ineffectual assistance of counsel with the proper licensing authority. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F. 2d 10 (1st Cir. 1988).

Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

The applicant is not eligible for late registration under 8 C.F.R. § 244.2(f)(2)(iv) as the applicant's attestation of informal marriage to her TPS registrant spouse cannot be accepted for purposes of this application as the state of Florida, where the applicant resides, does not recognize common law marriages entered into after 1968. *See Fla. Stat. Ann. section 741.211 (2002)*.

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 issues presented on motion to reopen fail to contain new facts to be proved. Accordingly, the motion to reopen will be also dismissed and the previous decisions of the AAO will not be disturbed.

ORDER: The motions are dismissed. The previous decisions of the AAO are affirmed, and the application remains denied.