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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: FEB 2 1 2014 Office: VERMONT SERVICE CENTER

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 was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be denied.

The applicant claims to be a citizen of Nicaragua who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

On March 13, 2012, the director denied the application because the applicant failed to establish that he was eligible for late registration.[1] The AAO, in dismissing the appeal, on July 25, 2013, concurred with the director's findings.

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 puts forth the same argument that was submitted on appeal and considered by the AAO in its decision to dismiss the appeal. Citing 8 C.F.R. § 1240.34 counsel further states that as the Form I-485, Application to Register for Permanent Residence or Adjust Status, was "***renewed,***" the denial was not final until a decision was issued by the Board of Immigration Appeals (BIA). Counsel states that the applicant's Form I-485 was still pending at the time the TPS application was filed in 2004 as the BIA did not issued its decision until April 20, 2005.

The regulation at 8 C.F.R. § 245.2(a)(5)(ii) states, in pertinent part, "No appeal lies from the denial of an application by the director, but the applicant, if not an arriving alien, retains the right to renew his or her application in proceedings under 8 CFR part 240."

The regulation at 8 C.F.R. § 1240.34 states, in pertinent part:

> An adjustment application by an alien paroled under section 212(d)(5) of the Act, which has been denied by the district director, may be renewed in exclusion proceedings under section 236 of the Act (as in effect prior to April 1, 1997) before an immigration judge under the following two conditions: first, the denied application must have been properly filed subsequent to the applicant's earlier inspection and admission to the United States; and second, the applicant's later absence from and return to the United States must have been under the terms of an advance parole authorization on Form I-512 granted to permit the applicant's absence and return to pursue the previously filed adjustment application.

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[1] The applicant's initial and re-registration applications were denied pursuant to 8 C.F.R. § 244.2(f)(2) and (g) on May 26, 2004 and April 12, 2006, respectively. The appeal from the denial of the re-registration application was dismissed on January 30, 2009.

While an individual may renew his/her adjustment of status application during removal proceedings, the individual must meet the requirements stipulated in the regulation above. As previously mentioned in our decision of July 25, 2013, the record contains no evidence to support these requirements.

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 establish that the decision was incorrect based on the evidence of record at the time of the initial decision and fails to cite precedent decisions supporting a motion to reconsider. Accordingly, the motion will be denied and the previous decision of the AAO will not be disturbed.

ORDER: The motion is denied. The previous decision of the AAO dated July 25, 2013, is affirmed.