



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE:
MAR 28 2014

Office: VERMONT SERVICE CENTER

[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,

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 motion to reconsider will be denied and the motion to reopen will be granted. 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.

On April 26, 2013, the director denied the application because it was determined that the applicant had failed to establish he was eligible for late registration, and because he failed to establish continuous residence in the United States since February 13, 2001 and continuous physical presence in the United States since March 9, 2001. The AAO conducted appellate review on a *de novo* basis and determined that the applicant had established late registration eligibility.¹ The AAO, in dismissing the appeal on January 17, 2014, concurred with the director's remaining findings as sufficient evidence had not been submitted to establish the applicant's residence and physical presence in the United States during 2006.

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 denied 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).

¹ See *Matter of N-C-M-*, 25 I&N Dec. 535 (BIA 2011).

Counsel, on motion, puts forth the same arguments that were previously submitted on appeal and were considered by the AAO in its decision of January 17, 2014. Counsel submits copies of documents that were previously provided along with:

- An affidavit from [REDACTED] of Washington, D.C, who indicates to have known the applicant since 2002, and that the applicant has not departed the United States since his entry. The affiant also attests to the applicant's residence in [REDACTED]
- A letter dated January 27, 2014, from [REDACTED] who indicates that the applicant is a registered parishioner, who has been attending its parish since 2006. The affiant also indicates that the parish's records indicate the applicant's residence at [REDACTED]
- A statement dated February 11, 2014, from [REDACTED] a mental health specialist, who indicates that the applicant on occasions would escort his brother to his appointments with [REDACTED] and with her at the Multicultural Clinic which was located at [REDACTED]
- A vehicle registration and renewal form from the Commonwealth of Virginia, which indicate that the registration expired on April 30, 2006 (the vehicle was purchased on April 2, 2004).
- Several copies of pay stubs from '[REDACTED]' issued during the periods ending November 10, 2006 through December 29, 2006.
- An additional affidavit from the applicant's mother, who reiterates the statements made in her earlier affidavit. The applicant's mother asserts that in 2006 she was in "continuous and physical contact" with the applicant as he resided with her at [REDACTED] Washington, D.C.
- An affidavit from the applicant, who indicates that in 2006 he was residing with his mother at [REDACTED] and that he found employment at [REDACTED] for a few months.

The AAO does not view these documents as substantive to support a finding that the applicant had resided and was physically present in the United States during 2006 as inconsistent and contradicting statements have been submitted. Specifically:

1. The address listed on the vehicle registration and renewal form does not correspond with the address of the applicant's mother.
2. The affidavit from the applicant's mother casts doubt as a review of her alien registration file contains a document titled "Division of Unaccompanied Child Services (DUCS), Interim Family Reunification Packet" signed by her on May 5, 2006. The document requested the names of all occupants residing with the mother and whether each occupant was dependent on her support "partly, fully or not." The applicant's name was not included on this list.

3. The affidavit from [REDACTED] lacks probative value as no corroborating evidence was submitted to support her statements.
4. The affidavit from [REDACTED] also casts doubt in that the affidavit does not provide detailed accounts of an ongoing association establishing a relationship under which the affiant could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite periods. It is noted that the affiant maintains the same address as counsel.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). As such, the issue on which the underlying decision was based has not been overcome on the motion to reopen.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not sustained that burden. Accordingly, the previous decision of the AAO will not be disturbed.

ORDER: The previous decision of the AAO dated January 17, 2014 is affirmed and the application remains denied.