



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE **NOV 12 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 AAO affirmed its decision on the first, second and third motions. The matter is again 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 dismissing the appeal 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 she was eligible for late registration. *See Decision of the Director* dated September 18, 2013. We concurred with the director's finding and dismissed the appeal. *See Decision of the AAO*, dated March, 26, 2013. The subsequent motions were affirmed by this office as the issue on which the underlying decision was based had not been overcome on motions. *See Decisions of the AAO*, dated on September 16, 2013, January 15, 2014 and April 29, 2014.

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).

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).

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).

On motion to reopen, the applicant again asserts that she was given ineffective assistance of counsel by her former attorney. The applicant provides photocopies of her El Salvadoran passport,

an Order of the Immigration Judge granting her voluntary departure from the United States on April 4, 1997, a retainer agreement entered into on March 26, 2001 between the applicant and an attorney regarding applications for labor certification and lawful permanent residence, and a copy of what appears to be a complaint form filed before the State of Florida Judicial Branch on July 8, 2014.

The retainer agreement, however, makes no mention of preparing and filing a Form I-821, Application for Temporary Protected Status, and there is no acknowledgement of receipt of the complaint form. Therefore, the applicant has not established that the complaint was properly filed with the appropriate disciplinary authority.

As previously mentioned in our decisions, the argument of ineffective assistance of counsel was not raised on appeal, and no evidence has been submitted indicating that an attempt has been made to notify counsel of the incompetent claim. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F. 2d 10 (1st Cir. 1988).

It appears that the applicant is requesting additional time to fulfill the requirements of *Lozada*. The regulations, however, do not provide for the extension of time to supplement the record on motion, but require documentary evidence to be submitted with the motion. 8 CFR 103.5(a)(2). 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 burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the previous decision of the AAO will not be disturbed.

ORDER: The motion to reconsider will be denied. The motion to reopen will be granted. The previous decision of the AAO dismissing the appeal is affirmed.