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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



U.S. Citizenship
and Immigration
Services

DATE: DEC 09 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. § 1254

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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. A subsequent appeal and motion to reopen were dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motion will be granted. The case will be remanded for further action.

The applicant is a native and citizen of Honduras who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

On January 30, 2007, the director withdrew TPS because it was determined that the applicant's misdemeanor conviction of sexual misconduct constituted rape and therefore an aggravated felony under section 101(a)(43)(A) of the Act. The AAO, in dismissing the appeal on May 6, 2010, concurred with the director's findings. The AAO dismissed the motion on June 26, 2013 as the evidence in the record indicated that the applicant was a registered sexual offender although the case and all pending charges related to the case had been dismissed.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

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).

In this case, the applicant failed to support his motion with any legal argument or precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy at the time of the initial decision. The motion to reconsider will be dismissed.

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).

On current motion, counsel submits a letter dated July 18, 2013, from the State of New York, Division of Criminal Justice Services indicating that the applicant is no longer registered as a sex offender. However, because this letter was neither signed nor certified it could not be accepted.

On October 18, 2013, the AAO sent a letter to the applicant advising him of this matter. The applicant was granted 30 days to submit a signed certified document from the New York State Sex Offender Registry addressing his removal from the sex registry.

The applicant, in response, submitted a letter with official seal dated October 30, 2013, from the State of New York Division of Criminal Justice Services. The letter is signed by a program manager of the New York State Sex Offender Registry, who indicates upon investigation, it was determined that the applicant's conviction of sexual misconduct had been vacated; that the conviction is not a qualifying conviction for purposes of registration under the Sex Offender

Registration Act; and that the applicant is not required to register with the Division of Criminal Justice Services Sex Offender Registry at this time.

The applicant has provided sufficient credible evidence to overcome the basis for the withdrawal of TPS. The applicant no longer has a felony or aggravated felony conviction, and he is no longer a registered sexual offender. There are no other known grounds of ineligibility that have been cited by the director in his decision. Therefore, the director's decision to withdraw the applicant's TPS and the AAO's decisions affirming the director's finding will be withdrawn.

However, the validity period of the applicant's fingerprint check has expired.

Accordingly, the case will be returned for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Following completion of this requirement, the director will render a new decision. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i), and the applicant shall be permitted to file an appeal without fee.

ORDER: The motion is granted. The decisions of the Director, Vermont Service Center, dated January 30, 2007, and of the AAO dated May 6, 2010 and June 26, 2013 are withdrawn. The matter is remanded for further action by the director.