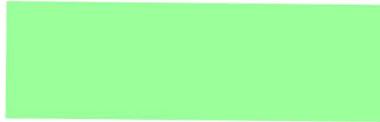




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **DEC 23 2013**

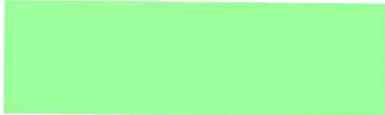
Office: VERMONT SERVICE CENTER

FILE:

IN RE: Applicant:

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 is a native and citizen of El Salvador who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director withdrew TPS because the applicant had failed to submit requested court documentation relating to his criminal record. On appeal, the applicant submitted the requested court documents and indicated that he was challenging his conviction of July 17, 2009, as he was not advised of the immigration consequences of a guilty plea. On February 19, 2013, the AAO dismissed the appeal due to the applicant's misdemeanor convictions and because no credible evidence had been submitted indicating that the convictions had been vacated for underlying procedural or constitutional defect having to do with the merits of the case.

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. See *Matter of Medrano*, 20 I&N Dec. 216, 219 (BIA 1990, 1991).

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

On motion, counsel asserts that the AAO should reconsider its decision as it erroneously stated a fact that was in contradiction with the evidence submitted with the original appeal. Specifically, the applicant's own affidavit indicated that his attorney did not advise him of the immigration consequences of his plea.

Counsel's assertion, however, is not persuasive. The AAO did take into consideration the applicant's affidavit as it was noted that said affidavit corroborated counsel's own statement that the applicant was not advised of the immigration consequences of a guilty plea. Citing *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983), the AAO determined that counsel had not provided any credible evidence to support his or the applicant's statement as there was no indication that the

Motion to Vacate submitted on appeal had been filed before the court. Counsel, on motion, resubmits the Motion to Vacate; however, counsel presents no documentary evidence beyond his own declaration that this motion has been filed before the court.

Assuming, arguendo, a Motion to Vacate has been filed before the respective court, the AAO will not hold a decision in abeyance while an individual seeks post-conviction relief. As previously noted in our decision of February 19, 2013, without certified documentation from the court indicating that the convictions have been vacated for underlying procedural or constitutional defect having to do with the merits of the case, the misdemeanor convictions continue to effect immigration consequences. *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006), *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), *Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999).

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

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. The previous decision of the AAO will not be disturbed.

**ORDER:** The motion is denied. The decision of the AAO dated February 19, 2013 is affirmed.