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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: JUN 2 0 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. § 1254a

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center. A subsequent appeal and two motions were 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 will be dismissed.

The applicant is a native and citizen of El Salvador who was granted TPS under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254. On January 22, 2009, the director withdrew TPS because the applicant had been convicted of a drug offense and therefore he was inadmissible under section 212(a)(2)(A)(i)(II) of the Act. The AAO, in dismissing the appeal on October 1, 2009, concurred with the director's findings. The subsequent motions were dismissed by the AAO on March 18, 2010, and June 25, 2010 as the issue on which the underlying decision was based had not been overcome on motion.

A motion to reconsider must state the reasons 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 (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. See *Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991).

On current motion, counsel citing *Matter of Martinez Espinoza,* 25 I&N Dec. 118 (BIA 2009), asserts that the applicant may qualify for a waiver under 212(h) of the Act.

An alien who is inadmissible under section 212(a)(2)(A)(i)(II) of the Act based on a drug paraphernalia offense may qualify for a waiver of inadmissibility under section 212(h) of the Act if that offense "relates to a single offense of simple possession of 30 grams or less of marijuana." *Martinez Espinoza* 25 I&N Dec at 123-26.

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). Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.[1] A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The burden is upon the applicant to prove that the conduct that renders him inadmissible "relates to a single offense of simple possession of 30 grams or less of marijuana." On motion, the applicant has presented no new facts or other documentary evidence to establish his burden. Accordingly, the motion will be dismissed, and the previous decisions of the AAO will be affirmed.

ORDER: The motion is dismissed. The previous decisions of the director and AAO, are affirmed.

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[1] The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <*new* evidence> . . . ." WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).