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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

M<sub>1</sub>

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JUN 25

[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

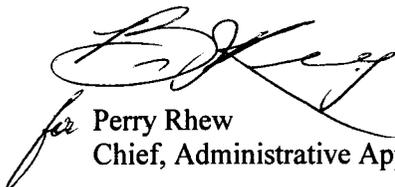
ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. §103.5(a)(1)(i).

  
Perry Rhew  
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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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). A motion was filed that has been subsequently dismissed by the AAO. The matter is again before the AAO on a motion to reopen and motion to reconsider. The previous decisions of the AAO will be affirmed, and the motion will be dismissed.

The applicant is 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 record reveals that the applicant filed a TPS application during the initial registration period on September 12, 2001, and the application was approved on May 28, 2002.

On January 22, 2009, the director withdrew TPS because the applicant was found to be inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug conviction. The AAO, in dismissing the appeal on October 1, 2009, concurred with the director's findings. The initial motion was dismissed by the AAO on March 18, 2010, as the issue on which the underlying decision was based had not been overcome on motion.

On current motion, counsel asserts that on March 31, 2010, the U.S. Supreme Court decided in *Padilla v. Kentucky*, 559 U.S. \_\_\_, 130 S.Ct. 1473 (2010) that an individual's counsel must inform the client whether a plea carries a risk of deportation. Counsel asserts that the Writ of Error Coram Nobis was denied prior to the Supreme Court's decision<sup>1</sup> and that the applicant has appealed the decision of the District Court. Counsel requests that this motion be treated as a motion to reconsider and indicates that he expects the appeal to be completed within 180 days.

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 Service policy. A motion to reconsider a decision on an application or petition 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 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).

The regulation at 8 C.F.R. § 103.5(a)(4) states, "[a] motion that does not meet applicable requirements shall be dismissed."

On motion, counsel appears to request that a final decision of the applicant's TPS be held pending the outcome of his appeal before the District Court. 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).

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<sup>1</sup> The District Court for Montgomery County, Maryland issued its decision on March 17, 2010.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met as the issue presented on motion fails to establish that the decision was incorrect based on the evidence of record at the time of the initial decision. Therefore, the motion will be dismissed and the previous decisions of the AAO will not be disturbed.

**ORDER:** The motion is dismissed. The previous decisions of the AAO are affirmed.