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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
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MAR 18 2010

FILE:

Office: VERMONT SERVICE CENTER

Date:

[WAC 01 282 60613]
[EAC 10 021 50831 – motion]

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:

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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). 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 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, under receipt number WAC 01 282 60613, and the application was approved on May 28, 2002.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8.C.F.R. § 244.14(a)(1).

On January 22, 2009, the director withdrew TPS because the applicant had been convicted of a drug offense and was therefore 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.

On motion, counsel asserts the applicant's plea to controlled dangerous substance - possession of paraphernalia was unknowing and therefore involuntary. As evidence, counsel submits a Writ of Error Coram Nobis that was filed before the Montgomery County Circuit Court of Maryland on October 29, 2009.

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 ... [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 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 requests that a final decision of the applicant's TPS be held pending the outcome in the Circuit Court. Counsel was aware of the applicant's inadmissibility since the issuance of the director's withdrawal notice on January 22, 2009;¹ however, the Writ of Error Coram Nobis was not filed until nine months later. Counsel cites no statute or regulation that compels the AAO to hold a decision in abeyance while the Circuit Court renders its decision. As such, counsel's request is denied.

¹ The Notice of Withdrawal of TPS was addressed to counsel at his address of record.

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 contain new facts to be proved and fails to cite precedent decisions supporting a motion to reconsider. Therefore, the motion will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion is dismissed. The previous decision of the AAO is affirmed.