



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE:

APR 26 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 in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 a motion to reconsider. The motion will be dismissed.

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. On August 24, 2009, the director withdrew TPS because the applicant had been convicted of at least two misdemeanors in the United States. The AAO, in dismissing the appeal on January 5, 2012, concurred with the director's findings.

On motion, counsel asserts that the applicant is eligible to apply for a waiver of grounds of inadmissibility under 212(d)(3) of the Act. Counsel states that the applicant has committed two misdemeanors, "which makes him inadmissible under 212(d)(3)." Counsel submits a copy of a Form I-601 Application for Waiver of Grounds of Inadmissibility, along with the motion.¹

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... [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).

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. The motion to reconsider will be dismissed.

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). Based on the

¹ The Form I-601 was administratively closed on April 19, 2012.

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.²

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

While registration for TPS does not prevent an applicant from applying for nonimmigrant status, the applicant, in the instant case, is/was not applying for a nonimmigrant visa. TPS is a temporary benefit that does not lead to lawful permanent resident status or give any other immigration status. The applicant was convicted of two misdemeanors and his convictions continue to preclude a favorable finding of eligibility for TPS. There is no waiver available for ineligibility under Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The motion to reopen 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. With the current motion, the application has not met that burden. Accordingly, the previous decision of the AAO will not be disturbed.

ORDER: The motions are dismissed. The previous decision of the AAO dated January 5, 2012, is affirmed.

² 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).