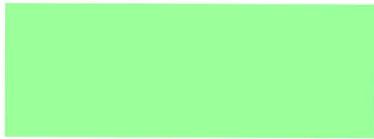


(b)(6)

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

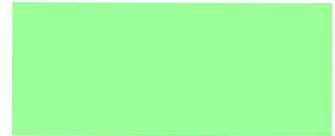


U.S. Citizenship
and Immigration
Services

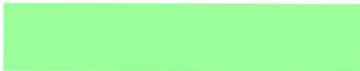


DATE: JUL 24 2013

Office: VERMONT SERVICE CENTER

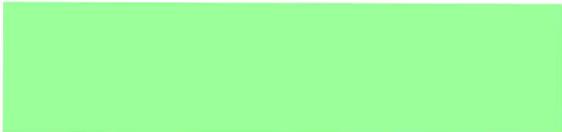


IN RE: Applicant:



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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 summarily 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 granted. The previous decision of the AAO will be withdrawn and the appeal will be sustained.

The applicant is a native and citizen of Nicaragua who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The record reflects that on March 12, 2012, the applicant was requested to submit certified judgment and conviction documents for his arrests on [REDACTED] by the Tampa Police Department for driving under the influence, and on [REDACTED] by the Hillsborough County Sheriff's Office for violation of probation. The director, in his decision of July 11, 2012, indicated that the applicant had submitted the final court disposition for the arrest on [REDACTED] but failed to address his subsequent arrest on [REDACTED]. The applicant's arrest on [REDACTED] for driving under the influence was reduced to reckless driving, a violation of Florida Statute 316.192(1). The applicant pled guilty to this misdemeanor offense and was sentenced to probation, DUI school and ordered to pay a fine and court cost. The director withdrew the applicant's TPS based on the applicant's failure to submit requested court documentation relating to his arrest on [REDACTED]. On February 7, 2013, the AAO summarily dismissed the appeal as the applicant had failed to provide evidence to overcome the director's finding and failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

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).

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

On motion, counsel submits evidence to support his claim that the applicant's supplemental brief and supporting documents were received on August 31, 2012 at the Vermont Service Center. Counsel also submits: 1) an updated Clerk's Certification of Disposition in [REDACTED]

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).

2) Criminal Report Affidavit/Notice to Appear for the arrest on [REDACTED] and 3) Criminal Report Affidavit/Notice to Appear for the arrest on [REDACTED]

Counsel asserts, in pertinent part:

The Hillsborough County Clerk did not give [the applicant] court disposition information regarding an arrest that occurred on November 12, 2010 because no such documentation exists. [The applicant] was not charged with a new offense on [REDACTED]. Rather, [the applicant's] probation was renegotiated after he failed to complete the classes as required by the court.

Counsel indicates that the clerk of the court provided the applicant with an updated certificate of disposition for citation number [REDACTED] for an offense under section 316.192(1) of the criminal traffic code of Florida. Counsel indicates that the certificate of disposition clearly states that the applicant's probation terminated on February 11, 2011 and that the case has been closed and the file has been destroyed. Counsel indicates that the Criminal Report Affidavit/Notice to Appear for the arrest on [REDACTED] indicates that it was a "self-arrest". Counsel indicates that the applicant turned himself into the Sheriff's Office after he realized that he had not completed all of the classes as required.

The evidence of record reflects that the applicant has one misdemeanor conviction for reckless driving, and it does not render him ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a). There are no other known grounds of ineligibility; therefore, the director's decision to withdraw the applicant's TPS and the AAO's decision affirming the director's finding will be withdrawn.

An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has met this burden.

ORDER: The motion is granted and the appeal is sustained. The decisions of the director dated July 11, 2012 and of the AAO dated February 7, 2013 are withdrawn.