



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: AUG 13 2014

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 (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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied 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 to reconsider will be dismissed and the motion to reopen will be granted. The order dismissing the appeal will be withdrawn. The case will be remanded for further action.

The applicant claims to be a citizen of Syria who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

On June 10, 2013, the director denied the application because the applicant failed to submit all the requested court documentation relating to his criminal record. The director also denied the application because it was determined that the applicant had been convicted of two misdemeanors in the United States.

We conducted appellate review on a *de novo* basis and determined that the applicant had only one misdemeanor conviction (section 23152(a) CVC) as the remaining conviction was an infraction offense (section 853.7 PC). In dismissing the appeal on May 12, 2014, we concurred with the director's finding that the applicant had not submitted the final dispositions for all arrests. Specifically, the documents provided for the applicant's arrests on September 8, 2007 and November 9, 2009 were insufficient as they were neither certified nor did they provide the final dispositions.

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

The motion to reconsider will be dismissed as it is not supported by pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy, and it does not 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).

On motion, counsel submits a letter dated June 10, 2014, from a representative of the Los Angeles County District Attorney's Office, Bureau of Branch & Area Operations. The letter indicates that the Los Angeles District Attorney's Office declined to file criminal charges against the applicant for violating sections 11357(a) H&S and 11357(b) H&S stemming from arrests by the Department on September 8, 2007 and November 9, 2009, respectively.

The applicant's failure to submit the requested final dispositions for his arrests on September 8, 2007 and November 9, 2009 has been overcome on motion. The applicant has one misdemeanor conviction for violating California Vehicle Code section 23152(b) 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 regulation in 8 C.F.R. § 244.4(a). However, the validity period of the applicant's fingerprint check has expired.

Accordingly, the case will be returned for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Following completion of this requirement, the director will render a new decision. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i), and the applicant shall be permitted to file an appeal without fee.

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 to reopen is granted. The case is remanded for appropriate action consistent with the above. The decisions of the director dated June 10, 2013 and of the AAO dated May 12, 2014 are withdrawn.