



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **FEB 11 2014**

Office: VERMONT SERVICE CENTER

[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:

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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). Counsel indicated on the Form I-290B, Notice of Appeal or Motion, that he was filing an appeal from the AAO's decision. A motion, rather than an appeal, is the proper forum in this case, pursuant to 8 C.F.R. § 103.5(a)(1)(i). The AAO will treat the filing of the Form I-290B as a motion to reconsider.¹ The motion will be denied.

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 March 13, 2013, the director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States. The AAO, in dismissing the appeal on September 27, 2013, concurred with the director's findings.

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 U.S. Citizenship and Immigration Service (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).

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

On motion, counsel once again argues that the issue is not whether the applicant "actually served a term of incarceration of six (6) months or not, but instead, whether the criminal court ordered a sentence that is five days or more." Counsel states that the applicant was sentenced to only one day in the county jail for his 2003 driving under the influence conviction and ninety-six hours for his 2011 driving under influence conviction.

The fact that the applicant was only sentenced to four days in county jail in 2011 is simply not relevant to the question of whether the offense qualifies as a "misdemeanor" for immigration purposes. The applicant, in this case, is applying for benefits under the federal law. The regulation clearly states that a misdemeanor is a crime "*punishable* by imprisonment for . . . one

¹ Counsel indicated in his brief that he was filing a motion to reconsider.

year or less, *regardless of the term . . . actually served.*" [Emphasis added.] Likewise, the regulation clearly states that a criminal violation will not be considered a misdemeanor only if it is "*punishable* by imprisonment for a maximum term of five days or less." [Emphasis added.] The operative word is "*punishable*," which indicates that a misdemeanor is defined under the regulation by the maximum imprisonment possible for the crime under California law, not the specific prison term meted out by the judge in a particular case. In this case, the applicant was convicted of an offense punishable by up to six months incarceration,² which meets the definition of a misdemeanor for immigration purposes. Consequently, the applicant remains convicted of the misdemeanor offenses.

The applicant failed to establish that the decision was incorrect based on the evidence of record at the time of the initial decision. Nor did the applicant support his motion by any pertinent precedent decision(s) to establish that the director's and the AAO's decisions were based on an incorrect application of law or USCIS policy. Accordingly, the motion will be denied, and the previous decision of the AAO will be affirmed.

ORDER: The motion is denied. The previous decision of the AAO dated September 27, 2013 is affirmed.

² Section 23536(a) of the California Vehicle Code.