



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: FEB 19 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. § 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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. On August 30, 2012, the applicant, through his previous counsel, filed a timely appeal, which was summarily dismissed by the Administrative Appeals Office (AAO). A timely motion to reconsider was filed by previous counsel and is now before the AAO. The motion will be granted. The order dismissing the appeal will be withdrawn. The appeal will be sustained.

The applicant is currently represented by another counsel.<sup>1</sup> On May 13, 2013, new counsel filed a motion to reconsider from the director's decision of July 31, 2012. As this motion (MSC1391147112) is not under the jurisdiction of the AAO pursuant to 8 C.F.R. § 103.5(a)(1)(i), it will be returned to director for issuance of a decision.<sup>2</sup>

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.

The record reflects that on May 18, 2012, the applicant was requested to submit certified judgment and conviction documents for his arrests by the ██████████ County Sheriff's Office (Florida) on November 26, 2010 for expired driver license more than six months, and on December 26, 2010 for failure to appear – expired driver license more than six months. On July 31, 2012, the director withdrew the TPS because it was determined that the applicant had failed to submit requested court documentation relating to his criminal record. On February 22, 2013, the AAO summarily dismissed the appeal as the record did not contain evidence to overcome the director's finding.

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).

On motion, former counsel submits evidence to support her claim that the applicant's response had been received prior to the issuance of the director's decision withdrawing TPS.<sup>3</sup> Former counsel resubmits court documentation from the ██████████ County Clerk of Courts indicating that on January 10, 2011, the applicant pled *nolo contendere* to expired driver's license – more than six months, a misdemeanor of the second degree. Adjudication of guilt was withheld and the applicant was ordered to pay court costs and a fine. The remaining offense, failure to appear – expired driver's license, was dismissed. ██████████

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<sup>1</sup> Previous counsel will be referred as former counsel and current counsel will be referred as new counsel.

<sup>2</sup> New counsel's motion is both untimely and moot based on the current decision of the AAO.

<sup>3</sup> The record contains documentation date-stamped as received at the Vermont Service Center on June 4, 2012.

The evidence of record reflects that the applicant has one misdemeanor conviction (expired driver license), 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). 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 filed on March 12, 2013 is granted and the appeal is sustained. The decisions of the director dated July 31, 2012 and of the AAO dated February 22, 2013 are withdrawn.