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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUL 0 1 2014 Office: CALIFORNIA 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. § 1254a

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. 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 application was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be dismissed.

The applicant is a citizen of Haiti who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254. On February 4, 2014, the director denied the application because the applicant failed to establish eligibility for late registration. The AAO, in dismissing the appeal on April 25, 2014, concurred with the director's finding.

On motion, counsel asserts that the applicant reiterates the arguments made in her appeal. Counsel asserts "that a person who made every effort to register, but was denied because of a frivolous asylum finding, which finding was recently vacated by the BIA, should be within the protection of this humanitarian program once the only substantive ground for denial has been removed."

As previously mentioned in our decision, as the Board of Immigration Appeals vacated the frivolousness finding, the applicant had overcome the sole basis for the denial of the initial TPS application. However, as the appeal from the denial of the initial application had been rejected by the AAO,[1] there was no decision on the part of the AAO that may be reopened in this proceeding. Jurisdiction resides in the official who made the adverse decision in the proceeding in this case, the Director, California Service Center.

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 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).

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[1] The appeal was rejected as untimely filed. At the time the AAO issued its decision on September 7, 2010, the untimely appeal did not meet the requirements of a motion to reopen or motion to reconsider.

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). The previous decision of the AAO will not be disturbed.

ORDER: The motion is dismissed. The previous decision of the AAO dated April 25, 2014, is affirmed.