



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **JUL 07 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. § 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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). The matter is now before the AAO on a motion to reconsider. The motion will be dismissed.

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 July 30, 2012, the director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States. The AAO, in dismissing the appeal on April 18, 2013, concurred with the director's findings

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 puts forth the same argument that was previously submitted on appeal. Specifically, that obstructing highway or other passageway is a traffic offense and not a crime regardless of the terminology used and potential punishment imposed by the state of Texas; that this offense under Texas law is the same as certain violations and traffic infractions under New York law; and that to disqualify the applicant for the act of driving under the speed limit would undermine the humanitarian purpose of the TPS program. Counsel asserts that TPS applicants in New York should not be treated more favorably than TPS applicants in Texas. Counsel again cites to a memorandum issued by U.S. Citizenship and Immigration Services (USCIS) on January 21, 2011, to support the argument that the applicant's conviction of obstructing highway or other passageway in Texas should not disqualify him from maintaining TPS.

Federal immigration laws should be applied uniformly, without regard to the nuances of state law. See *Ye v. INS*, 214 F.3d 1128, 1132 (9th Cir. 2000); *Burr v. INS*, 350 F.2d 87, 90 (9th Cir. 1965). Thus, whether a particular offense under state law constitutes a "misdemeanor" for immigration purposes is strictly a matter of federal law. See *Franklin v. INS*, 72 F.3d 571 (8th Cir. 1995); *Cabral v. INS*, 15 F.3d 193, 196 n.5 (1st Cir. 1994). While we must look to relevant state law in order to determine whether the statutory elements of a specific offense satisfy the regulatory definition of "misdemeanor," the legal nomenclature employed by a particular state to classify an offense or the consequences a state chooses to place on an offense in its own courts under its own laws does not control the consequences given to the offense in a federal immigration proceeding. See *Yazdchi v. INS*, 878 F.2d 166, 167 (5th Cir. 1989); *Babouris v.*

Esperdy, 269 F.2d 621, 623 (2d Cir. 1959); *United States v. Flores-Rodriguez*, 237 F.2d 405, 409 (2d Cir. 1956).

Texas law specifically states that a violation of obstructing highway or other passageway is a Class B misdemeanor punishable by up to six months in jail. *See* Texas Penal Code § 42.03. The court documentation clearly indicates that the offense of obstructing highway or other passageway is a Class B misdemeanor. For immigration purposes, the applicant was convicted of the misdemeanor offense of obstructing highway or other passageway. Section 101(a)(48)(A) of the Act and 8 C.F.R. § 244.1.

As such, the criminal issue in which the denial of the application and the dismissal of the appeal were based has not been overcome on motion. Consequently, the AAO's decision on this ground will not be disturbed.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not sustained that burden. The previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed. The decision of the AAO dated April 18, 2013 is affirmed.