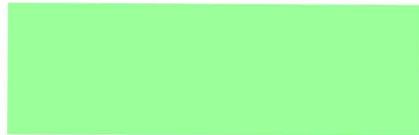


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE:

JUN 16 2014

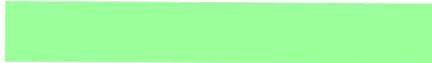
Office: VERMONT SERVICE CENTER

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 6, 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 March 4, 2013, concurred with the director's findings.

On motion, counsel asserts that the offenses committed by the applicant do not qualify as misdemeanors under 8 C.F.R. § 244.1. Citing to memorandums issued by U.S. Immigration and Customs Enforcement on December 21, 2012 and by U.S. Citizenship and Immigration Services on January 21, 2011, counsel requests that the case be reconsidered and brought to the attention of USCIS counsel so that a determination can be made whether the applicant is still eligible for TPS as the applicant did not receive jail time for either offense.

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 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).

The record contains court documentation in Case no. [REDACTED] from the Superior Court of Los Angeles County, California which indicates that on January 10, 2011, the applicant pled nolo contendere to violating section 14601.1(a) CVC, driving while license is suspended or revoked, and section 23103 CVC, reckless driving, both misdemeanors. The applicant was placed on probation for three years and ordered to pay a fine and court costs for violating section 14601.1(a) CVC. The applicant was placed on probation for two years and ordered to pay a fine

and court costs and enroll in an alcohol and drug education program for violating section 23103 CVC.

While the determination of an individual's crime may be relevant to one's removability as outlined in the memorandum of December 21, 2011, it is not applicable to the applicant in these TPS proceedings. Likewise, the memorandum of January 21, 2011, specifically pertains to certain offenses where the court has issued a "no jail" or "no incarceration" certification. The court documents submitted, however, do not indicate that a "no jail" or "no incarceration certification" was issued. Therefore, counsel's request is denied.

For immigration purposes, a misdemeanor is a crime "*punishable* by imprisonment for . . . one 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.

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).

ORDER: The motion is dismissed. The previous decision of the AAO dated March 4, 2013, is affirmed.