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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:

MAY 06 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. § 1254

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.

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 reopen and motion to reconsider. The motion to reconsider will be dismissed and the motion to reopen will be granted. The case will be remanded for further action.

The applicant is a native and citizen of Nicaragua who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director withdrew TPS because the applicant had been convicted of three misdemeanors (Case numbers [REDACTED] and [REDACTED]) in the United States. The AAO, in dismissing the appeal on January 6, 2014, 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 that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

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. *Matter of Medrano*, 20 I&N Dec. 216, 219 (BIA 1990, 1991).

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).

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

On motion, the applicant submits certified court documents in Cases [REDACTED] and [REDACTED] from the County Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, indicating that motions to vacate plea, judgment and sentence were filed before the court on October 2, 2012; that each motion was granted on January 10, 2013; and that each charge was *nolle prosequi* on February 1, 2013.

On March 18, 2014, the AAO sent a notice to the applicant advising him that the court documents were incomplete as the reason for the dismissal of each case was not provided. The applicant was afforded 30 days to submit either certified complete court proceedings or a certified letter from the District Attorney's Office outlining the basis for the dismissals of Cases [REDACTED]¹ and [REDACTED]

In response, counsel submitted certified documents from County Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, indicating that the convictions were vacated for constitutional defect having to do with the merits of each case. On or about January 17, 2013, the applicant entered a not guilty plea for each charge and was accepted in the Traffic Pre-Trial Diversion Program. On February 1, 2013, the charges were *nolle prosequi*.

The applicant has provided sufficient evidence to indicate that the dismissals of his convictions were vacated on the merits, and was not rehabilitative. Therefore, the AAO finds that the applicant has not been convicted, for immigration purposes, of the two misdemeanor offenses noted above.

The applicant has one remaining misdemeanor conviction, Florida Statute 784.03, 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). No other known grounds of ineligibility had been cited by the director. Therefore, the director's decision to withdraw the applicant's TPS and the AAO's decision affirming the director's finding will be withdrawn. However, the validity period of the applicant's fingerprint check has expired.

Accordingly, the case will be returned for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Following completion of this requirement, the director will render a new decision. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i), and the applicant shall be permitted to file an appeal without fee.

ORDER: The decisions of the Director, Vermont Service Center, dated May 24, 2012, and of the AAO dated January 1, 2014, are withdrawn. The motion to reconsider is dismissed. The motion to reopen is granted. The matter is remanded for further action by the director.

¹ The AAO inadvertently listed Case number [REDACTED] which relates to an infraction offense.