



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **NOV 26 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. § 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 and a motion to reconsider was affirmed by the Administrative Appeals Office (AAO). The matter is again before the AAO on a motion to reconsider. The motion will be denied and the previous decision of the AAO will be affirmed.

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 director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States. *See Decision of the Director* dated January 13, 2011. We concurred with the director's finding and dismissed the appeal. *See Decision of the AAO*, dated March 6, 2012. On the first motion, we affirmed our prior decision. *See Decision of the AAO*, dated April 4, 2014.

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 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).

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Although counsel indicates that she is submitting a brief, the record of proceedings contains no brief. Counsel does provide printouts of *US v. Orellana*, 405, F. 3d 360 (5th Cir. 2005), and *Flores v. U.S. Citizenship and Immigration Services* 718 F.3d 548 (6th Cir. 2013), along with excerpts from 8 C.F.R. § 103.8 and 8 C.F.R. §§ 244.10 and 244.14. The issue in *Orellano* specifically concerned 18 U.S.C. § 922(g)(5)(A), which criminalizes the possession of a firearm by aliens who are illegally or unlawfully present in the United States. *Id.* at 361-62. In *Flores*, the court held that a grant of TPS satisfies the admission requirements in section 245(a) of the Act for purposes of eligibility for adjustment of status.

The materials provided, however, have no bearing in the instant case as the applicant was not applying for adjustment of status,¹ and he had not been arrested for and/or convicted of 18 U.S.C. § 922(g)(5)(A).²

The applicant through counsel does not state the reasons for reconsideration, cite any authority to establish that the decision of April 4, 2014, was based on an incorrect application of law or USCIS policy, or establish that the decision was incorrect based on the evidence of record at the time of the initial decision. Therefore, the motion does not meet the regulatory requirements of a motion to reconsider at 8 C.F.R. § 103.5(a)(3) and will be denied.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the previous decision of the AAO will not be disturbed.

ORDER: The motion will be denied. The previous decision of the AAO dated April 4, 2014 is affirmed. The applicant's TPS remains withdrawn.

¹ The applicant's Form I-485, Application to Register Permanent Residence or Adjust of Status had been denied on September 29, 2009.

² The applicant was convicted in the state of Louisiana of no driver's license, driving while intoxicated and hit and run.