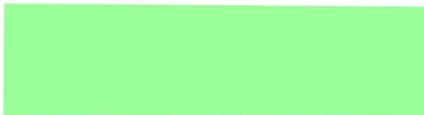




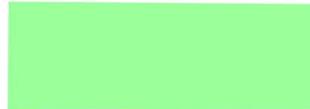
U.S. Citizenship  
and Immigration  
Services

(b)(6)

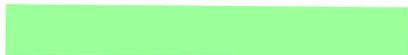


DATE: SEP 25 2014

Office: VERMONT SERVICE CENTER

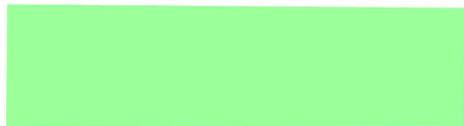


IN RE: Applicant:



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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 applicant filed a motion to reconsider. The AAO reopened its decision on its own motion. The case will be remanded for further action and consideration.

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 may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

On August 6, 2012, the director withdrew TPS because the applicant failed to submit evidence to show that the inadmissibility charges against him had been resolved and because he failed to file a requested Form I-601, Application for Waiver of Ground of Inadmissibility. In our decision of June 26, 2013, we concluded that while the applicant had been arrested for alien smuggling, the records of U.S. Citizenship and Immigration Services (USCIS) indicated that prosecution had been declined. Upon a *de novo* review, it was determined that the applicant remained ineligible for TPS as: 1) USCIS record indicated that subsequent to the August 1, 2010 apprehension, the applicant had been removed from the United States under sections 212 and 234 of the Act; and 2) questions had been raised regarding his nationality and identity due to the applicant's claim of Mexican citizenship on four separate apprehensions in 2000.

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).

On motion, counsel reiterates that the applicant was never prosecuted for alien smuggling or the transportation of aliens in connection with his 2010 detention. Counsel asserts that the applicant was not removed, but merely detained and then released without prosecution. Regarding the applicant's claim of Mexican citizenship, counsel states that this matter was previously settled "on his [the applicant's] prior application for TPS and subsequent renewals via proof of his birth certificate and/ or Salvadorian passport on prior applications."

Upon further review of the record, we have determined that our decision was, in part, in error in finding that the applicant had been removed from the United States at the time of his 2010 apprehension. On May 30, 2014, we reopened the proceedings *sua sponte* pursuant to 8 C.F.R. § 103.5(a)(5)(ii), and sent a notice to the applicant advising him that counsel's response regarding his

El Salvadoran nationality and identity was not sufficient to overcome our finding. The applicant was requested to submit his original passport and birth certificate or an original national identity document bearing his photograph and/or fingerprint.

In response, the applicant provides an original birth certificate with English translation and an original passport issued by the El Salvador Consulate in Los Angeles, California on November 8, 2012. The authenticity of the passport has been verified by a representative of the El Salvador Consulate in New York, New York.

The record indicates that prosecution was declined for alien smuggling; that the applicant was not removed from the United States subsequent to his apprehension on August 1, 2010; and that the applicant has presented sufficient evidence to establish his true nationality and identity. Therefore, the decisions of the director dated August 6, 2012 and of the AAO dated June 26, 2013 are withdrawn.

The record, however, reflects that the validity period of the applicant's fingerprint check has expired. Accordingly, the case will be remanded for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Thereafter, 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).

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. §1361.

**ORDER:** The decisions of the AAO dated June 26, 2013 and of the director dated August 6, 2012 are withdrawn. The case is remanded for further action consistent with the above and entry of a new decision.