



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **AUG 06 2015**

FILE: [REDACTED]  
APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254a

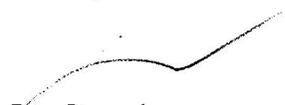
ON BEHALF OF APPLICANT:

[REDACTED]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the application. A subsequent appeal was dismissed and three motions have been affirmed by the Administrative Appeals Office (AAO). The matter is currently before the AAO on a motion to reconsider. The motion will be granted and the previous decision of the AAO will be affirmed.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254. On December 10, 2008, the director denied the application as the applicant failed to establish he was eligible for late registration and found to be inadmissible to the United States for a controlled substance related conviction with no available waiver, due to his drug conviction in 1987. In dismissing the appeal on October 8, 2009, we concurred with the director's findings and stated that no evidence was provided to establish late registration eligibility, that the amount of cocaine possession involved was irrelevant to the issue of eligibility for TPS, that the deferred adjudication of the driving while intoxicated offense met the definition of a conviction under section 101(a)(48) of the Act and section 322(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) stated that the amendment of the definition of conviction shall be applied retroactively. We conducted appellate review on a *de novo* basis and further determined that the applicant was also ineligible for TPS due to his felony conviction. The applicant's subsequent motions were dismissed on August 3, 2010, December 2, 2011, and July 1, 2014, as the issues on which the underlying decision was based had not been overcome on motion.

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. 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 rebuts our finding of inadmissibility regarding the applicant's 1986 felony drug conviction, asserting again that the applicant is eligible for section 212(c) relief under the Act and warrants the exercise of discretion. However, even assuming, *arguendo*, that a waiver could cure the applicant's inadmissibility to the United States, the applicant is still ineligible for

TPS due to his failure to meet the threshold requirements for late registration under 8 C.F.R. § 244.2(f)(2) and for having a felony conviction pursuant to 8 C.F.R. § 244.4(a).

The burden of proof in application proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Therefore, the previous decision of the AAO will not be disturbed.

**ORDER:** The motion is granted. The previous decision of the AAO dated June 3, 2013 is affirmed.