



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: JUL 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:



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

Thank you,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Director, Vermont Service Center, simultaneously withdrew the applicant's Temporary Protected Status and denied an application for re-registration. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider and a motion to reopen. The motion to reconsider will be denied and the motion to reopen will be granted. The order dismissing the appeal will be withdrawn. The appeal is sustained.

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. § 1254a. On March 3, 2014, the acting director withdrew TPS and denied the re-registration application because the applicant had failed to submit requested court disposition relating to an arrest for kidnapping in El Salvador. In dismissing the appeal on October 6, 2014, we concurred with the acting director's findings.

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

The motion to reconsider will be denied 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, counsel provides a Certification of Criminal Records (with English translation) dated April 22, 2014 from the Secretary of the Registry of Criminal Records in El Salvador indicating that their records contained no charge of a crime and no criminal records by final conviction against the applicant. Based upon the provision of this new evidence, the applicant's motion to reopen will be granted.



We find that the applicant has submitted sufficient evidence establishing that he has no criminal record in El Salvador that would prevent him from maintaining TPS.

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 been met. Accordingly, the acting director's decision withdrawing the applicant's TPS and denying the application for re-registration and the AAO's decision affirming the acting director's finding will be withdrawn. The appeal will be sustained and the applicant's TPS will be reinstated.

**ORDER:** The motion to reconsider is denied. The motion to reopen is granted. The decision of the AAO dated October 6, 2014, is withdrawn. The appeal is sustained.