



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[REDACTED]

DATE: **JUL 23 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,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Center Director, Vermont Service Center, denied the application for Temporary Protected Status. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider and reopen. The motion to reconsider will be denied and the motion to reopen will be granted. The order dismissing the appeal will be affirmed.

The applicant is a native and a 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. § 1254a. On September 5, 2012, the director denied the TPS application because the applicant had failed to establish late registration eligibility; continuous residence in the United States since February 13, 2001; and continuous physical presence in the United States since March 9, 2001. In dismissing the appeal on November 17, 2014, we concurred with the director's findings. We determined that the applicant was not eligible for late registration, as a TPS application had not been filed within a 60-day period following either the termination of his asylum application or his divorce from his former TPS registrant spouse. We also determined that the evidence in the record only established the applicant's residence and physical presence in the United States from February 13, 2001 through August 2006, and that no probative evidence had been submitted to refute evidence of an arrest on October 26, 2006 in El Salvador. On motion, counsel submits a brief and additional evidence.

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).

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 Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. See *Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991).

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).

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). The motion to reopen will be granted based upon the new evidence submitted by the applicant.

*Late Registration*

Counsel concedes that the applicant does not qualify for TPS under 8 C.F.R. § 244.2(f)(2)(iv), as his marriage to a TPS registrant terminated in or about 2007. Counsel, however, asserts that the applicant is eligible for late registration under 8 C.F.R. § 244.2(f)(2)(ii) because he had a pending asylum application.

The applicant was a derivative of his spouse's Application for Asylum and Withholding of Removal (Form I-589), which was denied on May 31, 2007. In a notice dated September 13, 2007, the Director, Los Angeles (California) Asylum Office, informed the principal applicant of the denial of her and her dependents' asylum applications.

To establish late registration, a TPS application must be filed within 60 days following the termination or expiration of the conditions described in 8 C.F.R. § 244.2(f)(2). The applicant, however, failed to file a TPS application within 60 days following notice of the termination of his spouse's asylum application on September 13, 2007. Counsel asserts that the notice regarding the termination of the asylum application was sent to the applicant's prior address and that the applicant was not aware of the notice; that it is unknown whether the notice was in fact delivered and received; and that it was not until he was arrested by ICE on November 8, 2010, that the applicant became aware of an in absentia order issued in May 2009.

However, counsel contends that the applicant divorced his spouse in or about 2007. The applicant's spouse was the primary applicant on the Form I-589 that was denied on May 31, 2007. Accordingly, as a derivative on that application, upon his divorce from the primary applicant, the applicant would no longer be eligible to be granted asylum based upon that application. *See* INA § 208(b)(3)(A). There is no indication that applicant filed a TPS application within 60 days after the termination of his divorce. In view of these facts, the applicant's assertions concerning notice of the termination of his former spouse's asylum application will not be addressed, as the applicant has not established late registration eligibility due to his 2007 divorce.

*Continuous Residence and Continuous Physical Presence*

As we have previously found that the applicant had submitted sufficient evidence to establish residence and physical presence in the United States from February 13, 2001 through August 2006, this period is no longer at issue. However, a Federal Bureau of Investigation (FBI) report lists an arrest in El Salvador for the applicant on [REDACTED] 2006 for assault.

Counsel asserts that the documents submitted establish that it is impossible for the applicant to be in El Salvador on [REDACTED] 2006. Counsel states the applicant worked continuously from October 9, 2006 through November 3, 2006 and that the applicant, who was an hourly paid

employee, received the same earnings in his paycheck during this period. Counsel also asserts that the employment letter from the applicant's former employer attested to his employment during the period in question, that the applicant's cellular bill shows he made telephone calls every single day without roaming fees from September 7, 2006 through November 6, 2006, and that if the applicant had been arrested in El Salvador a heavy prison sentence would have been imposed upon him. Counsel resubmits documents to establish that the applicant did not interrupt his continuous residence and continuous physical presence in the United States based on an alleged arrest in El Salvador. These documents were previously determined to be insufficient to overcome the center director's findings.

Counsel's brief on motion has been considered. However, as previously noted, the record of the applicant's arrest of [REDACTED] 2006 was obtained via a fingerprint analysis and the applicant has not provided probative evidence from the El Salvadoran authorities confirming or denying the arrest. The applicant has the burden to establish with affirmative evidence that the record of the applicant's arrest of [REDACTED] 2006 was in error. Therefore, despite the evidence submitted by the applicant, he has failed to establish that he has maintained continuous residence and continuous physical presence in the United States during the requisite periods. 8 C.F.R. § 244.2(b) and (c).

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 to reconsider is denied. The motion to reopen is granted. The previous decision of the AAO dated November 12, 2014 is affirmed.