



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF J-D-C-

DATE: OCT. 21, 2015

MOTIONS OF ADMINISTRATIVE APPEAL OFFICE DECISION

APPLICATION: FORM I-821, APPLICATION FOR TEMPORARY PROTECTED STATUS

The Applicant, a native and citizen of El Salvador, seeks review of the decision withdrawing the Applicant's temporary protected status (TPS). *See* Immigration and Nationality Act (the Act) § 244, 8 U.S.C. § 1254(a). The Director, Vermont Service Center, withdrew the Applicant's TPS. The Applicant appealed the decision, which we subsequently dismissed. The matter is now before us on motions to reopen and reconsider. The motions will be denied.

On March 6, 2014, the Director withdrew TPS, finding that the Applicant had not remained continuously physically present in the United States from the date he was first granted TPS as required by 8 C.F.R. § 244.14(a)(2). The Director noted that the applicant testified under oath to departing the United States for four months before his employment authorization expired on September 9, 2013. The Director further noted that although the Applicant obtained advance parole, he testified to receiving the documentation after he had departed from the United States, and he was unable to use the travel documents to reenter on November 28, 2013, because they expired on September 9, 2013.

On February 10, 2015, we dismissed the appeal, finding that the Applicant did not maintain continuous physical presence in the United States as his absence was not brief, casual, and innocent. We found that the Applicant's extended absence was not of short duration, reasonably calculated to accomplish the purpose for the absence and not contrary to law, as the Applicant's stated purpose for the absence was to smuggle his wife and child into the United States.

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

On motion, the Applicant asserts that it was not his intention to remain outside of the United States for 6 months, and submits a statement explaining the circumstances that led to his prolonged absence from the United States. The Applicant asserts that he paid extortion money to the gangs in El Salvador and also made a criminal report to the police, but did not receive any protection from the police. The Applicant states that he began to arrange the necessary documents to take his family out of El Salvador, and 4 months later nothing was accomplished. The Applicant asserts that because his family continued to be in danger from the gangs, he had no other option than to bring the family with him to the United States. The Applicant states that it took him 2 months to get back to the United States. The Applicant requests that his TPS be reconsidered as he never intended to abandon his status.

On motion, the Applicant has presented no new facts or other supporting documentary evidence to establish his burden. 8 C.F.R. § 103.5(a)(2). Accordingly, the motion to reopen must be denied. The motion also does not cite to any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy, and the motion 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). Consequently, the motion to reconsider must also be denied.

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 motion will be denied and our previous decision will not be disturbed.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of J-D-C-*, ID# 14944 (AAO Oct. 21, 2015)