



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

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

MATTER OF S-P-

DATE: SEPT. 10, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of Haiti, seeks Temporary Protected Status. *See* Immigration and Nationality Act (the Act) § 244, 8 U.S.C. § 1254a. The Director, California Service Center, denied the application. We dismissed a subsequent appeal and denied a motion to reconsider. The matter is now before us on a motion to reopen and reconsider. The motion will be denied.

On January 14, 2014, the Director denied the application as the Applicant did not establish continuous residence in the U.S. since January 12, 2011, and continuous physical presence in the U.S. since July 23, 2011. In dismissing the appeal on March 21, 2014, we concurred with the Director's finding that the evidence of record established that the Applicant was not present in the United States from October 31, 2009 through January 8, 2013, so that he could not establish continuous residence and physical presence in the U.S. from the designated dates for TPS eligibility. On February 18 2015, we denied the motion to reconsider as it was untimely filed. We noted that the motion would have been still denied if it had been timely filed as it did not meet the requirements of a motion pursuant to 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).

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

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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, the Applicant requests that his case be reconsidered as he has been in the United States since 1994 and has not abandoned his home. The Applicant reasserts that he is requesting that his case be reviewed by an Immigration Judge.

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). The motion does not cite to any pertinent precedent decisions to establish that the decision was based on an incorrect application of law of 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).

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 is denied.

Cite as *Matter of S-P-*, ID# 13749 (AAO Sept. 10, 2015)