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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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

M1

DATE:

Office: VERMONT SERVICE CENTER

FILE:

JUN 09 2011

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. The Administrative Appeals Office (AAO) rejected the appeal without rendering a decision. The matter is now before the AAO on a motion to reconsider. The motion will be granted. The AAO will reopen the proceedings pursuant to 8 C.F.R. § 103.5(a)(5)(ii). The decision will be withdrawn and the case will be remanded to the Director, Vermont Service Center, for further action.

On August 23, 2004, the director denied the application because she found that the applicant had failed to submit requested court documentation relating to her criminal record. On January 14, 2008, counsel for the applicant filed a Form I-290B, Notice of Appeal or Motion, and indicated at Part 2, that he was filing a motion to reopen and reconsider. The director erroneously accepted the applicant's response as an appeal instead of a motion and forwarded the file to the AAO for review. On April 3, 2009, the AAO rejected the appeal as it was untimely filed.

Although the Form I-290B was filed over three years after the decision of the director was issued, the AAO lacks jurisdiction in the adjudication of the motion. *See* 8 C.F.R. § 103.5(a)(1)(i). Therefore, the decision of the AAO will be withdrawn and the case will be remanded for the director to consider the motion.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The decision of the AAO dated April 3, 2009, is withdrawn. The case is remanded to the director for further action consistent with the above and entry of a decision.