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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

[REDACTED]
DATE: **MAY 07 2013**

Office: CALIFORNIA SERVICE CENTER [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: Self-represented

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 California 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a citizen of Haiti who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director determined that a prior order of removal had been reinstated and the applicant was not eligible to apply for any relief pursuant to section 241(a)(5) of the Act. The director, therefore, denied the application.

On appeal, the applicant does not address the basis for the denial of the application or provide any evidence to dispute the director's findings. The applicant merely provides a statement requesting that his application be reconsidered due to the current conditions in his native country.

Section 241(a)(5) of the Act provides if the Attorney General, now the Secretary, Department of Homeland Security, finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under the Act, and the alien shall be removed under the prior order at any time after the reentry.

The record reflects that a Form I-862, Notice to Appear, was issued on October 11, 2001 and served on the applicant on October 16, 2001. On July 16, 2002, a hearing was held and the applicant was ordered removed from the United States. The applicant filed an appeal from the decision of the immigration judge (IJ) to the Board of Immigration Appeals (BIA). On March 11, 2004, the BIA affirmed, without opinion, the IJ's decision. On September 7, 2008, the applicant departed the United States. On May 6, 2010, the applicant was apprehended by the U.S. Border Patrol in Highgate Springs, Vermont after entering the United States without inspection. On the same day, a Form I-205, Warrant of Removal/Deportation, and a Form I-871, Notice of Intent/Decision to Reinstate Prior Order, were issued. On June 9, 2010, a Form I-220B, Order of Supervision, was issued.

During the reinstatement process, the applicant raised no ground for challenging the reinstatement of removal order. 8 C.F.R. § 241.8(e)

Based on the above finding, the director determined that the applicant was not eligible to apply for any relief pursuant to section 241(a)(5) of the Act and therefore he was ineligible for TPS under section 244 of the Act. Accordingly, the director denied the application on December 28, 2011.

The applicant's statements on appeal have been considered. The AAO, however, is bound by the clear language of the statute and lacks the authority to change the statute. There is no waiver available, even for humanitarian reasons, due to the applicant's ineligibility pursuant to section 241(a)(5) of the Act. Consequently, the director's decision to deny the TPS application on this ground will be affirmed.

ORDER: The appeal will be dismissed.