



U.S. Citizenship
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Services

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DATE: **SEP 27 2011** Office: NEBRASKA SERVICE CENTER FILE: 

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:

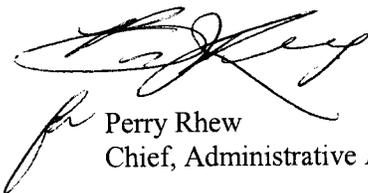


INSTRUCTIONS:

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 Nebraska 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 Nebraska 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,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and motion to reconsider. The motion will be dismissed.

The applicant is 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 denied the application because the applicant had previously filed a frivolous asylum application and, therefore, he was permanently ineligible. The AAO, in dismissing the appeal on September 24, 2010, concurred with the director's finding.

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 reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy ... [and] must, when filed, also 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).

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

On motion, counsel asserts that the applicant is eligible for TPS because section 244 of the Act does not mention section 208(d)(6) in reference to ineligibility for TPS.

Section 208(d)(6) of the Act provides if an applicant has filed a frivolous application, he is permanently ineligible for *any* benefits under the Act. Regardless of the temporary nature of TPS, it is still a benefit. The AAO is bound by the clear language of the statute and lacks the authority to change the statute.

Counsel asserts that in its decision, the Board of Immigration Appeals (BIA) failed to address the immigration judge's frivolous application finding.

Counsel cannot collaterally attack the decision of the BIA before the AAO. The BIA and the U.S. Circuit Court of Appeals are the appropriate forums for disputing the BIA's decision. The applicant had the opportunity on motion before the BIA to dispute the findings. It is noted that counsel represented the applicant during the removal proceedings and the record does not reflect that a motion was filed before the BIA.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met as the issue presented on motion fails to establish that the decision was incorrect based on the evidence of record at the time of the initial decision and fails to cite precedent decisions supporting a motion to reconsider. Therefore, the motion will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion is dismissed. The previous decision of the AAO is affirmed and the application will remain denied.