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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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DATE: **JUL 27 2011** Office: VERMONT 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 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,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). A motion to reconsider was filed that has been subsequently dismissed by the AAO. The matter is again before the AAO on a motion to reopen and motion to reconsider. The previous decisions of the AAO will be affirmed, and the motion will be dismissed.

The applicant is a citizen of Somalia 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 may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

The record reflects that the applicant's TPS application was approved on October 2, 2002. On September 16, 2009, the director withdrew the applicant's TPS because he had been convicted of a felony. The AAO, in dismissing the appeal on April 5, 2010, concurred with the director's findings. The initial motion was dismissed by the AAO on September 30, 2010, pursuant to 8 C.F.R. § 103.5(a)(1)(i) as the motion was untimely filed.

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 current motion, counsel asserts, in pertinent part:

While the AAO was correct in that the Form I-290B was originally incorrectly filed with the AAO, and that it was ultimately received at the Vermont Service Center on May 11, 2010, [the applicant] hereby respectfully requests that the AAO reconsider its decision to dismiss his Motion to reopen, and find that his delay in filing the Motion with the Vermont Service Center was reasonable under the circumstances and that it was beyond his control.

Counsel cites the regulation at 8 C.F.R. § 103.5(a)(1)(ii), which provides that the official having jurisdiction is the official who made the latest decision in the proceeding unless the affected party moves to a new jurisdiction. Counsel also asserts the instructions on the Form I-290B, Notice of Appeal or Motion, do not specifically reference where motions are to be filed. Counsel asserts:

Given the confusing and apparently contradictory information provided in the instructions and regulations, and the fact, at various points in the instructions, the form makes a distinction between the treatment of motions and appeals, it was reasonable for the applicant to assume that there was a difference in the filing locations as well. This, coupled with the fact that the decision at issue was the decision from the AAO, led to a reasonable misunderstanding regarding the filing location.

Contrary to counsel's assertion the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(E) requires that a motion be submitted to the office *maintaining* the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction. Furthermore, the coversheet of the decision of September 30, 2010, clearly indicated that the motion "must be submitted to the Vermont Service Center..." The applicant has not submitted any credible evidence to overcome the AAO's decision of September 30, 2010.

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 the current motion fails to contain new facts to be proved, and fails to establish that the decision of September 30, 2010, was incorrect based on the evidence of record at the time of the initial decision. Therefore, the motion will be dismissed and the previous decisions of the AAO will not be disturbed.

ORDER: The motion is dismissed. The previous decisions of the AAO are affirmed.