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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

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

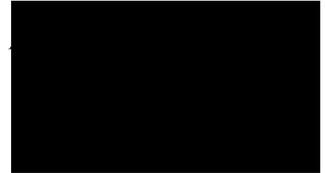


M,

DATE: **JUN 08 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 reconsideration. 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, she was permanently ineligible for any benefit under section 244 of the Act. The AAO, in dismissing the appeal on September 29, 2010, concurred with the director's findings.

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 AAO did not consider whether a frivolous finding under section 208(d) of the Act precludes eligibility for TPS status under section 244(c) of the Act. There is a lifetime bar to *any benefit* for an individual who has been found to have knowingly filed a frivolous application for asylum. Despite the temporary nature of TPS, it is a benefit nonetheless.

On motion, counsel asserts that the determination of the Board of Immigration Appeals (BIA), in affirming, without opinion, the decision of the immigration judge does not meet the regulatory requirement. Counsel citing 8 C.F.R. §1208.20, asserts that the regulation "makes explicit that a final order by...the Board of Immigration Appeals must specifically find that the alien knowingly filed a frivolous asylum application."

An adoption or affirmance of a decision of an immigration judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those which the immigration judge articulate in his or her decision." *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994). Furthermore, 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 decisions. The AAO notes that the applicant had filed a motion to reopen disputing the BIA's decision of June 30, 2003; however, her motion was filed untimely and was denied.¹

¹ A motion to reopen must be filed within 90 days of the final administrative decision. See 8 C.F.R. § 1003.2(c)(2).

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met her burden of proof. Accordingly, the motion will be dismissed, the prior decision of the AAO will be affirmed and the application will remain denied.

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