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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**



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DATE: **JUN 29 2011**

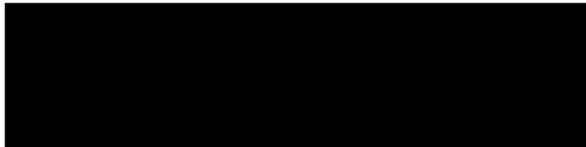
Office: NEBRASKA SERVICE CENTER

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, and is now before the Administrative Appeals Office on appeal. The appeal will be remanded for further action.

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.

Section 241(a)(5) of the Act provides:

If the Attorney General 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 after at any time after the reentry.

The record reflects that on March 8, 1993, exclusion proceedings were held and the applicant was ordered excluded and deported from the United States. No appeal was filed from the decision of the immigration judge. According to his affidavit, which accompanied a Form I-601, Application for Waiver of Grounds of Inadmissibility, the applicant re-entered the United States on November 13, 1994.<sup>1</sup> On October 20, 2009, the applicant was arrested for violating 8 U.S.C. § 1326(a), illegal entry after deportation, and a Form I-871, Notice of Intent/Decision to Reinstate Prior Order, was issued. On October 20, 2009, a Form I-205, Warrant of Removal/Deportation, was issued. On October 22, 2009, a Form I-229(a), Warning for Failure to Depart, was issued. The order of the immigration judge dated October 28, 2009, indicates that the request for a change in custody status was denied and that the court had no jurisdiction as "DHS reinstating order of removal."

However, during the custody review process, it was determined that the Form I-205 could not be executed, and on November 23, 2009, a Form I-220B, Order of Supervision, was issued that appears to be still in effect. Because the reinstatement of the prior order has not been enforced, the director's finding will be withdrawn.

The case will be remanded to the director for further adjudication of the application. The director may request any additional evidence that she considers pertinent to assist with the determination of the applicant's eligibility for TPS. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

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<sup>1</sup> The applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on April 30, 2007.

While not the basis for the remand of this case, it is noted that there is a motion to reopen filed on July 1, 2009, on behalf of the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, that has not been adjudicated.

**ORDER:** The case is remanded to the director for further action consistent with the above and entry of a decision.