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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 30 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: 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 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 (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 denied the application because a prior order of removal had been reinstated and it was determined that the applicant was not eligible to apply for any relief pursuant to section 241(a)(5) of the Act.

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 order at any time after the reentry.

The record reflects that a Form I-862, Notice to Appear, was issued and served on the applicant on September 30, 2005. On October 23, 2009, a removal hearing was held and the applicant was removed *in absentia*. On October 30, 2009, a Form I-205, Warrant of Removal/Deportation, was issued. On February 27, 2010, the applicant was apprehended by the U.S. Border Patrol in North Troy, Vermont after entering the United States without inspection. On February 27, 2010, a Form I-871, Notice of Intent/Decision to Reinstate Prior Order, a Form I-294, Warning to Alien Ordered Removed or Deported, and a Form I-205, Warrant of Removal/Deportation, were issued.

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

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

On appeal, the applicant asserts that he is requesting an appeal of the immigration judge's order of October 23, 2009. The AAO, however, is not the appropriate forum for disputing a decision rendered by an immigration judge. *See* 8 C.F.R. § 1003.3(a). The applicant requests that due to the conditions in his native country, Haiti, his TPS application be reconsidered and approved.

The reinstatement of the prior order does not appear to have been enforced as the record contains no evidence that the Form I-205 has been executed. As such, the AAO cannot concur with the director's finding regarding this issue.

However, during the adjudication of the applicant's appeal, information came to light that rendered the applicant statutorily ineligible for the benefit sought.

USCIS records reflect that prior to February 27, 2010, the applicant self-removed himself from the United States. On May 10, 2011, the AAO issued a notice to the applicant advising him that it was the AAO's intent to dismiss the appeal because the applicant had not continuously resided in the United States as a result of the self-removal. The applicant was advised that Congress provided no relief for failure to maintain continuous residence due to a departure under an order of removal. Relief is provided for absences based on factors other than deportation, namely absences due to emergencies and absences approved under the advance parole provisions.

The applicant was granted 30 days to provide evidence to overcome, fully and persuasively, this finding. The record shows that as of the date of this decision, the applicant has failed to respond to the AAO's notice. Therefore, the record must be considered complete. The applicant is ineligible for TPS as he has failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c) due to his absence resulting from an order of removal.

An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.