

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

**PUBLIC COPY**

M<sub>1</sub>

[Redacted]

FILE: [Redacted]

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Applicant: [Redacted]

MAR 08 2011

[Redacted]

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

ON BEHALF OF APPLICANT:

[Redacted]

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 California 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 California 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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

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 court documentation in Case no. [REDACTED] reflects that on August 4, 2006, the applicant pled no contest to two counts of child neglect/delinquency, a violation of Florida Statute 827.04(1)(a).<sup>1</sup> Accordingly, the director denied the application because the applicant had been convicted of two or more misdemeanors in the United States.<sup>2</sup>

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The date of filing is not the date of mailing, but the date of actual receipt. An application that is submitted with the wrong filing fee shall be rejected as improperly filed. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued the Notice of Decision on November 10, 2010, and it was mailed to the applicant and counsel at their addresses of record. The appeal was received at the California Service Center on December 8, 2010; however, it was rejected as the correct fee was not submitted. While the director, in her Notice of Decision, indicated that the fee to file an appeal on Form I-290B was \$585.00, that fee was increased to \$630.00 effective November 23, 2010.<sup>3</sup> The appeal was returned to the applicant on December 8, 2010, with instructions to file the correct fee. The appeal with the correct fee was received at the California Service Center on December 20, 2010, 40 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

A motion to reopen must state the new facts to be proved in 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 reasons for reconsideration and be supported by any pertinent precedent

---

<sup>1</sup> The director, in her decision, inadvertently listed the date of conviction as December 16, 2006 instead of August 4, 2006.

<sup>2</sup> The director, in her decision, inadvertently included a battery offense as a conviction. The court documentation indicates the offense was dismissed in [REDACTED]

<sup>3</sup> *See* 75 FR 58961-58991 (Sept. 24, 2010).

decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition 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).

Here, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

As the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

**ORDER:** The appeal is rejected.