



U.S. Citizenship
and Immigration
Services

NY

DATE: Office: VERMONT SERVICE CENTER FILE:

DEC 03 2012

IN RE: Applicant:

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

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron M. Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The applicant's TPS was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The applicant claims to be a native and citizen of Honduras who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director determined that the applicant has been convicted of two or more misdemeanors in the United States that rendered him ineligible for TPS under section 244(c)(2)(B)(i) of the Act; 8 C.F.R. § 244.4. On May 9, 2012, the director withdrew the applicant's TPS accordingly. On June 26, 2012, the applicant filed a Form I-290B, Notice of Appeal or Motion.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that an affected party or the attorney or representative of the record must file a complete appeal within 30 days after service of an unfavorable decision. If the decision is mailed, the 30-day period for submitting an appeal begins 3 days after it is mailed. 8 C.F.R. § 103.5a(b). The date of filing is the date of actual receipt of the appeal, not the date of mailing. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record reflects that the director issued the decision on May 9, 2012 and mailed a copy of the decision to the applicant at his address of record and a copy to counsel at his address of record. It is noted that the director properly notified the applicant that he must file the appeal within 33 days from the date of the Notice (May 9, 2012). The record reflects that although the applicant dated the appeal June 5, 2012, the appeal was not received until June 26, 2012, forty-four (44) days after the decision was issued.¹ Therefore, the appeal was untimely filed and must be rejected.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the time limit for filing an appeal. However, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) provides that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. § 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3), 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: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) 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).

¹ The record reflects that the applicant attempted to file a Form I-290B, which was received at the service center on June 7, 2012. The form was rejected as incomplete and the applicant subsequently filed a complete Form I-290B, which was received at the service center on June 26, 2012. An application or petition which is not properly filed shall be rejected and rejected applications and petitions will not retain a filing date. 8 C.F.R. § 103.2(a)(7)(i).

The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the director of the Vermont Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii).

The matter will therefore be returned to the director. If the director determines that the late appeal meets the requirements of a motion, the motion shall be granted and a new decision will be issued.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.