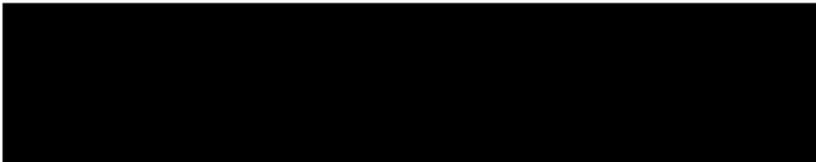




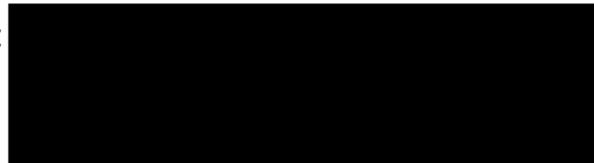
U.S. Citizenship
and Immigration
Services



M

DATE: Office: NEBRASKA SERVICE CENTER FILE:

DEC 04 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: 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 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 application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office 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 director denied the application because the applicant failed to establish that she has continuously resided and has been continuously physically present in the United States for the requisite periods for TPS under section 244 of the Act.

On July 3, 2012, [REDACTED] a claimed representative of the applicant filed a Form I-290B, Notice of Appeal or Motion, asserting that the applicant did not fully understand the requirements to establish her eligibility for TPS. The claimed representative requests that the matter be reopened so that "I can speak on the behalf of [the applicant], I will make sure that appropriate documents are gathered and . . ."¹

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 service director issued the decision on April 19, 2012 and mailed it to the applicant at her address of record. It is noted that the director properly notified the applicant of her right to appeal the unfavorable decision to the AAO as provided under the regulation. Although the applicant dated the appeal on May 19, 2012, the appeal was not received until July 3, 2012, seventy-five (75) days after the decision was issued.² Therefore, the appeal was untimely filed and must be rejected.

¹ Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

² The record reflects that the director denied the application on April 19, 2012. On May 17, 2012, the applicant attempted to file a Form I-290B under receipt # [REDACTED] but it was rejected as incomplete. On June 11, 2012, the applicant attempted to file another Form I-290B under the receipt # [REDACTED] and it was rejected as incomplete. The applicant filed a complete Form I-290B, which was received at the service center on July 3, 2012 under receipt # [REDACTED]. 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).

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).

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 Nebraska 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.