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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

PUBLIC COPY



M₁

DATE:

JAN 27 2012

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. § 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 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. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and motion to reconsider. The motion will be dismissed.

The applicant is 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.

The AAO, upon a *de novo* review, determined that the applicant was statutorily ineligible for the benefit sought as he self-removed from the United States.¹ The applicant was advised of the adverse information in a notice dated May 10, 2011. The applicant was granted 30 days to submit evidence to overcome this finding. The applicant, however, failed to respond to the AAO's notice. On June 30, 2011, the AAO dismissed the appeal.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) requires that a motion to reopen or reconsider a proceeding must be filed within 30 days of the underlying decision, and that a motion to reopen must be filed within 30 days except that failure to file a motion during this period may be excused when the applicant has demonstrated that the delay was reasonable and beyond the control of the applicant.

Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

The regulation at 8 C.F.R. § 103.5(a)(1)(iii)(E) requires that a motion be submitted to the office *maintaining* the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction.

Pursuant to 8 C.F.R. § 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

The AAO rendered its decision on June 30, 2011. The Form I-290B , Notice of Appeal or Motion, is very clear in indicating that the motion is not to be sent directly to the AAO. Likewise, the AAO's decision indicated that the motion "must be submitted to the Nebraska Service Center." The applicant, nevertheless, sent the motion to the AAO, which was received on July 26, 2011. The

¹ The applicant's Form I-589, Application for Asylum and Withholding of Removal, was denied and on October 23, 2009, the applicant was ordered removed *in absentia* from the United States. On February 27, 2010, the applicant illegally entered the United States without inspection and was apprehended by the U.S. Border Patrol in North Troy, Vermont.

AAO returned the Form I-290B to the applicant on July 28, 2011 with instructions to send it to the Nebraska Service Center. The motion was received at the Nebraska Service Center on August 9 2011, 40 days after the date of the AAO's decision. The applicant has not demonstrated that the delay was reasonable and beyond his control. The motion is untimely.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the motion was not filed within the allotted time period. Accordingly, the motion will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion is dismissed. The previous decision of the AAO is affirmed.