



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **APR 30 2013** Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE: Applicant: [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: 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 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 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 Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center. A subsequent appeal and motion were dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on a motion to reconsider. The motion 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.

On June 22, 2010, the director denied the application because she found that the applicant had failed to submit requested court documentation relating to his criminal record. The AAO, upon a *de novo* review, determined that the applicant was ineligible for TPS due to his felony convictions and because of his failure to establish continuous residence since January 12, 2010 and continuous physical presence since January 21, 2010 in the United States. The AAO also found the applicant inadmissible under section 212(a)(A)(i)(II) of the Act due to his drug-related convictions.

On motion, the AAO determined that the applicant had provided sufficient documentation to establish that he and [REDACTED] were separate individuals and that the arrest and subsequent conviction relating to the importation and distribution of cocaine and the removal from the United States on September 14, 2006 did not relate to the applicant. On June 27, 2012, the AAO dismissed the motion as the issues regarding the applicant's failure to establish continuous residence since January 12, 2010 and continuous physical presence since January 21, 2010 had not been overcome on motion.

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. § 103.8(b).

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 27, 2012. This motion was received on August 8, 2012, 41 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 to reopen was not filed within the allotted time period. Accordingly, the motion to reconsider will be dismissed and the previous decision of the AAO will not be disturbed.

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**ORDER:** The motion is dismissed. The AAO's findings relating to the applicant's continuous residence and continuous physical presence will be affirmed and the decisions of November 26, 2011, and June 27, 2012, will not be disturbed.