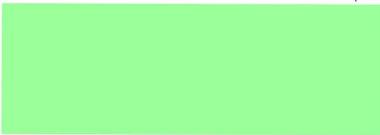


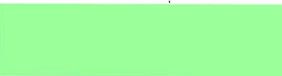


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **FEB 13 2013** Office: CALIFORNIA 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

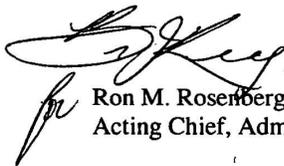
ON BEHALF OF APPLICANT: SELF-REPRESENTED

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 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 M. Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal 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.

The director denied the application because the applicant is ineligible for TPS as an alien described in section 241(a)(5) of the Act.

On appeal, the applicant indicated that he left the United States for Canada on June 1, 2008 and that he reentered the United States on February 15, 2010. The applicant does not dispute the basis of the director's decision that he is ineligible under section 241(a)(5) of the Act.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Secretary may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the FEDERAL REGISTER, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;

(b)(6)

(iii) The applicant is a parolee or has a pending request for reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

Section 241(a)(5) of the Act states, in pertinent part:

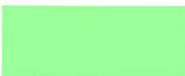
- (5) Reinstatement of removal orders against aliens illegally reentering.

If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed the alien is not eligible and may not apply for any relief under the Act, and the alien shall be removed under the prior order at any time after the reentry.

A review of the facts and procedural history reflects that in November 1997, the applicant entered the United States without being inspected and admitted or paroled. On October 1, 1998, the applicant filed a Form I-589, Application for Asylum and for Withholding of Removal. On May 28, 2002, an immigration judge (IJ) denied the Form I-589 application and ordered the applicant removed to Haiti. The applicant appealed the IJ's decision to the Board of Immigration Appeals (BIA), and on August 28, 2003, the BIA dismissed the appeal and affirmed the decision of the IJ denying the Form I-589 and the removal of the applicant to Haiti. The applicant remained in the United States until June 1, 2008, when the applicant voluntarily departed the United States for Canada. The applicant remained in Canada until February 14, 2010 when he illegally reentered the United States at the Newport, Vermont border. The applicant was apprehended upon reentry, a sworn statement was taken and the applicant was released upon a claim of a fear of return to Haiti. On February 15, 2010, the Patrol-Agent-in-Charge, Newport, Vermont Border Patrol Station, reinstated the August 28, 2003 order of removal against the applicant. The applicant was personally served the reinstatement of removal order on February 15, 2010.

Based on the above finding, the director determined that the applicant was ineligible for TPS benefits and denied the application on February 2, 2012.

On appeal, the applicant stated that he moved to Canada on June 1, 2008 because he was finding it difficult to reside in the United States because he did not have a work permit and could not



(b)(6)

Page 4

work in the United States. The applicant also stated that he returned to the United States from Canada on February 15, 2010 and that he now wants to reside in the United States. The applicant did not dispute the reinstatement of the prior removal order and did not address the basis of his ineligibility for TPS.

The applicant's statements on appeal have been considered. Based on the evidence of record including the reinstatement of the prior removal order, the applicant is ineligible for any benefit under the Act. As such, the applicant is ineligible for TPS benefits under section 244 of the Act. The AAO is bound by the clear language of the statute and lacks the authority to change the statute. Consequently, the director's decision to deny the TPS application on this ground will be affirmed.

An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.