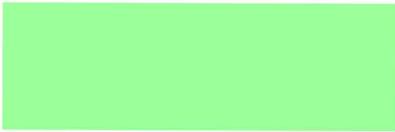


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: JUN 06 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. § 1254a

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The applicant appealed the decision of the AAO. A motion, rather than an appeal, is the proper forum in this case, pursuant to 8 C.F.R. § 103.5(a)(1)(i). The AAO will treat the filing of the Form I-290B, Notice of Appeal or Motion, as a motion to reopen. The motion will be dismissed, and the previous decision of the AAO will be affirmed.

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 it was determined that the applicant had firmly resettled in another country prior to arriving in the United States. The director also denied the application because the applicant could not establish continuous residence in the United States since January 12, 2011 due to her entry into the United States on February 1, 2011. The AAO, in dismissing the appeal, on December 4, 2012, concurred with the director's findings.

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).

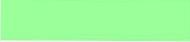
The regulation at 8 C.F.R. § 103.5(a)(1)(iii)(E) requires that a motion be submitted to the office *maintaining* the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction.

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 December 4, 2012. The Form I-290B is very clear in indicating that the motion is not to be sent directly to the AAO. Likewise, the AAO's decision indicates that the motion "must be submitted to the California Service Center." The applicant, nevertheless, sent the motion to the AAO, which was received on January 16, 2013. The AAO returned the Form I-290B to the applicant on January 17, 2013 with instructions to where it must be filed. The Form I-290B was received at the Phoenix Lockbox on January 24, 2013, 51 days after the date of the AAO's decision. The applicant has not demonstrated that the delay was reasonable and beyond her control. The motion is untimely.

Assuming, arguendo, the motion was received at the Phoenix Lockbox or at the California Service Center on January 16, 2013, the motion would have still been untimely filed as it was received 43 days after the AAO's decision was issued.

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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 reopen 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 dated December 4, 2012, is affirmed.