

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



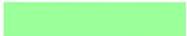
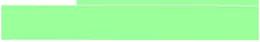
U.S. Citizenship
and Immigration
Services

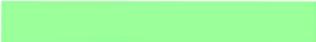
(b)(6)



DATE: **MAY 20 2013**

Office: CALIFORNIA SERVICE CENTER

FILE: 


IN RE: Applicant: 

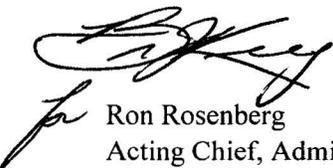
APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254a

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

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

Thank you,


Ron 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 (AAO) 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 applicant filed his TPS application on June 11, 2012. Along with his TPS application, the applicant submitted a copy of his passport and Form I-94, Arrival-Departure Record, which indicated that he was admitted into the United States on August 15, 2011, as a nonimmigrant visitor. The director denied the application because the applicant failed to establish he was eligible for late registration.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must submit the complete appeal within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued the Notice of Decision on October 30, 2012, and it was mailed to the applicant at his address of record. The instruction on the Form I-290B, Notice of Appeal or Motion, is very clear in indicating that the appeal is not to be sent directly to the AAO. Likewise, the Notice of Decision indicates that the Form I-290B “may not be filed directly with the AAO. The appeal must be filed at the address at the top of this page.” The applicant, nevertheless, sent his appeal to the AAO. The AAO returned the Form I-290B to the applicant on November 27, 2012 with instructions to where the Form I-290B must be filed. The appeal was received at the USCIS Phoenix Lockbox on December 20, 2012, 50 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Director, California Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director determined that the late appeal did not meet the requirements of a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.