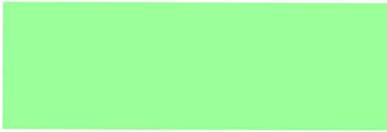


(b)(6)

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: Office: CALIFORNIA SERVICE CENTER

NOV 08 2013

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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

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

Ron Rosenberg
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 AAO will return the matter to the director for consideration as a motion.

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 failed to submit the requested pre-trial diversion agreement relating to his May 3, 2011 charges of aggravated battery upon a pregnant person, false imprisonment and tampering with or harassing a victim.

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. 8 C.F.R. § 103.8(b). The date of filing is not the date of mailing, but the date of actual receipt. A benefit request which is not signed and submitted with the correct fee will be rejected. 8 C.F.R. § 103.2(a)(7)(i). A benefit request which is rejected will not retain a filing date. 8 C.F.R. § 103.2(a)(7)(iii).

The record indicates that the director issued the Notice of Decision on July 12, 2013, and it was mailed to the applicant at his address of record. The Form I-290B, Notice of Appeal or Motion, was received on August 6, 2013, however, it was rejected and returned to the applicant. The appeal was received at the Phoenix Lockbox on August 21, 2013, 40 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 applicant has provided on appeal court documentation relating to his plea prior to the pre-trial intervention program.¹

Here, the untimely appeal meets the requirements of a motion. 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). Therefore, the director must consider the untimely appeal as a motion and render a new decision accordingly.

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

ORDER: The appeal is rejected.

¹ Successfully completing a pre-trial diversion program and obtaining dismissal of the charges may not constitute a conviction under immigration law as long as there has been no plea of guilty entered at any time.