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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



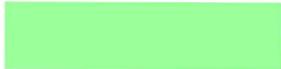
U.S. Citizenship  
and Immigration  
Services



DATE: **NOV 08 2013**

Office: NEBRASKA 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:



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, Nebraska 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 had previously filed a frivolous asylum application and, therefore, he was permanently ineligible for any benefit under section 244 of the Act.

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 March 15, 2013, and it was mailed to counsel at his address of record. The envelope containing the Form I-290B, Notice of Appeal or Motion, was postmarked April 16, 2013, and it was received at the Phoenix Lockbox on April 18, 2013, 34 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, Nebraska Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii).

Counsel, on appeal, has provided a copy of a decision dated May 17, 2013, issued by the Board of Immigration Appeals vacating the Immigration Judge's April 1, 2003 frivolous finding.

However, as the documentation in this matter was submitted directly to the AAO in accordance with 8 C.F.R. § 103.3(a)(2)(viii), it is apparent that the director did not have an opportunity to fully review the late appeal to determine whether it meets the requirements of either a motion to reopen or a motion to reconsider. Therefore, the director shall 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. The matter is returned to the director for consideration as a motion.