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U.S. Citizenship
and Immigration
Services

DATE: **NOV 18 2013** Office: CALIFORNIA SERVICE CENTER

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 (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 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 establish she 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 a Notice of Decision on January 11, 2013, and it was mailed to the applicant at her address of record. 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 applicant, nevertheless, sent her appeal to the AAO, which was received on March 11, 2013. The AAO returned the Form I-290B to the applicant on March 12, 2013 with instructions to where the Form I-290B must be filed. The envelope addressed to the applicant’s address of record was returned to the AAO as undeliverable.¹ The appeal was processed by U.S. Citizenship and Immigration Services on June 3, 2013, 143 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.

¹ The applicant listed her address on the Form I-290B as [REDACTED]. The Form I-290B was re-sent to the applicant’s address of record on April 8, 2013 and May 15, 2013, but the envelopes were again returned to the AAO as undeliverable. On May 30, 2013, the AAO forward the Form I-290B with fee to be processed at the Chicago Lockbox.

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NON-PRECEDENT DECISION

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Finally, it is noted that the applicant had previously filed a Form I-290B on March 15, 2013, and indicated at Part 2 that she was appealing the denial decision from the current application. A decision from the initial Form I-290B will be addressed under separate cover.

ORDER: The appeal is rejected.