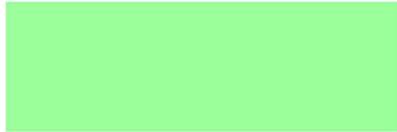




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: NOV 26 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 (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".

for 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 had previously filed a frivolous asylum application and, therefore, he is 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 June 12, 2013, and it was mailed to the applicant at his 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 Forms I-290B and I-912, Request for Fee Waiver, to the AAO, which was received on July 18, 2013. The AAO returned the forms to the applicant on July 19, 2013 with instructions to where they must be filed. The Forms I-290B and I-912 were received at the California Service Center on August 5, 2013, 54 days after the decision was issued. Accordingly, the appeal was untimely filed.

Assuming, arguendo, the Forms I-290B and I-912 were received at the California Service Center on July 18, 2013, the appeal would have still been untimely filed as it was received 36 days after the decision was issued

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.