



U.S. Citizenship
and Immigration
Services

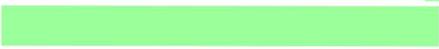
(b)(6)



DATE: Office: CALIFORNIA SERVICE CENTER
FEB 11 2014



IN RE: Applicant:



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

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the California Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). Two motions were filed that have been denied by the AAO. The applicant appealed the latest decision of the AAO. A motion, rather than an appeal, is the proper forum in this case, pursuant to 8 C.F.R. § 103.5(a)(1)(i). The AAO will treat the filing of the Form I-290B, Notice of Appeal or Motion, as a motion to reopen. The motion will be denied, and the previous decisions of the AAO will be affirmed.

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.

On June 22, 2010, the director denied the application because she found that the applicant had failed to submit requested court documentation relating to his criminal record. On November 26, 2010, the AAO, upon a *de novo* review, determined that the applicant was ineligible for TPS due to his felony convictions and because of his failure to establish continuous residence since January 12, 2010 and continuous physical presence since January 21, 2010 in the United States. The AAO also found the applicant inadmissible under section 212(a)(A)(i)(II) of the Act due to his drug-related convictions.

On the initial motion, the AAO determined that the applicant had provided sufficient documentation to establish that he and [REDACTED] were separate individuals and that the arrest and subsequent conviction relating to the importation and distribution of cocaine and the removal from the United States on September 14, 2006 did not relate to the applicant. On June 27, 2012, the AAO upheld its other findings as the applicant's failure to establish continuous residence since January 12, 2010 and continuous physical presence since January 21, 2010 had not been overcome on motion.

The second motion was denied by the AAO on April 30, 2013, as it was untimely filed and the applicant did not demonstrate that the delay was reasonable and beyond his control.

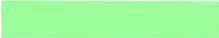
A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On the current motion, the applicant puts forth the same brief that was previously submitted on the initial motion.¹ The applicant, however, has not addressed the basis for the denial of the second motion and has not demonstrated that the untimely filing of that motion was reasonable and beyond his control.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met as the issue presented on motion fails to establish that the decision was incorrect based on the evidence of record at the time of the second motion.

¹ The applicant's brief was considered by the AAO in its decision prior to denial of the initial motion.

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Accordingly, the motion to reopen will be denied and the previous decisions of the AAO will not be disturbed.

ORDER: The motion is denied. The AAO's findings relating to the applicant's continuous residence and continuous physical presence will be affirmed and the decisions of the AAO, will not be disturbed.