



U.S. Citizenship  
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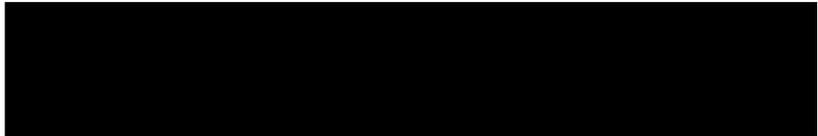
Office: California Service Center

Date: MAR 05 2007

[WAC 05 062 75147]

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen will be dismissed.

The applicant is stated to be a citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1254.

The record reveals that the applicant filed a late initial TPS application on July 15, 2003, under CIS receipt number SRC 03 205 55435. The director, Texas Service Center, denied that application on December 23, 2003, because the applicant failed to establish his eligibility for late initial registration, and his continuous physical presence in the United States since January 5, 1999. The record reflects that the applicant did not file an appeal to the denial of his initial TPS application.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on December 1, 2004, under CIS receipt number WAC 05 062 75147, and indicated that he was re-registering for TPS. The director, California Service Center, denied that application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

The appeal from the director's decision was dismissed, on March 6, 2006, after the AAO also concluded that the applicant had failed to establish his eligibility for TPS. On motion to reopen, the applicant reasserts his claim of eligibility for TPS.

A motion to reopen or reconsider must be filed within thirty days of the underlying decision, except that failure to file during this period may be excused at the Service's discretion when the applicant has demonstrated that the delay was reasonable and beyond the control of the applicant. 8 C.F.R. § 103.5(a)(1)(i).

Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

The previous decision from the AAO, dated March 6, 2006, clearly advised the applicant that any motion to reopen must have been filed within thirty days. Coupled with three days for mailing, the motion, in this case, should have been filed on or before April 9, 2006. The motion to reopen was received at the California Service Center on April 12, 2006.

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 since the motion to reopen was not filed within the allotted time period. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

**ORDER:** The motion to reopen is dismissed. The previous decision of the AAO dated March 6, 2006, is affirmed.