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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship and Immigration Services

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FILE:



[EAC 99 151 51718]

OFFICE: TEXAS SERVICE CENTER DATE:

JUN 29 2005

IN RE:

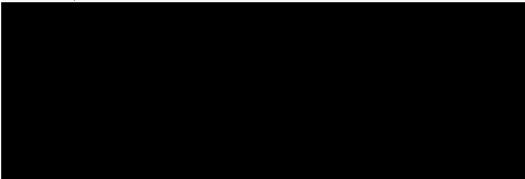
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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DISCUSSION: The approval of the applicant's Temporary Protected Status was withdrawn by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant is a native and citizen of Honduras who was granted Temporary Protected Status (TPS) on November 29, 1999. The director of the Texas Service Center subsequently withdrew the applicant's Temporary Protected Status on December 4, 2003, when it was determined that the applicant was not, in fact, eligible for TPS because he had been convicted of two or more misdemeanors. The director informed the applicant that he could file an appeal with "the Service Center Director who issued the denial" within thirty days after service of the decision.

The record reveals the following offenses:

1. On August 23, 2002, the applicant was arrested in Galax, Virginia, under the name [REDACTED] and charged with driving a motor vehicle on a highway without having obtained a driver's license in violation of section 46.2-300 of the Ordinance of the City of Galax, Virginia, a class 2 misdemeanor. The applicant was also charged with knowingly or intentionally possessing marijuana not obtained directly from, or pursuant to, a prescription or order of a practitioner while acting in the course of a professional practice, or not authorized by the Drug Control Act, in violation of section 18.2-250.1, Ordinance of the City of Galax, Virginia, a Class U misdemeanor. On October 16, 2002, the applicant pled guilty to both charges in the General District Court, Galax, Virginia.
2. On January 22, 2003, the applicant was arrested in Galax, Virginia, under the name [REDACTED] and charged with failure to display a license plate in violation of section 46.2-711 and also with "No Operator's License" in violation of section 46.2-300 (148.1). The applicant pled guilty to both charges.

An appeal that is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee accepted will not be refunded. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

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 director's decision withdrawing the applicant's Temporary Protected Status, dated December 4, 2003, clearly advised the applicant that any appeal must be properly filed with "the Service Center Director who issued the denial" within thirty days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). Coupled with three days for mailing, the appeal, in this case, should have been filed on or before January 6, 2004. The applicant did not initially submit his appeal to the Texas Service Center until January 16, 2004, ten days after the expiration of the 33-day filing period. The director of the Texas Service Center rejected the appeal and instructed the applicant to file the appeal with the service center that originally approved his TPS application, in this case, the Vermont Service Center. The applicant did not properly file the appeal with the Vermont Service Center until January 27, 2004.

Although the director of the Texas Service Center incorrectly rejected the applicant's appeal and instructed him to file the appeal with the Vermont Service Center, the fact remains that the applicant did not initially submit his appeal to the Texas Service Center until January 16, 2004. Even if the applicant's appeal had been accepted by the Texas Service Center as properly filed on January 16, 2004, it still would have been untimely filed.

Based upon the applicant's failure to file a timely appeal, the appeal will be rejected.

ORDER: The appeal is rejected.