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U.S. Citizenship  
and Immigration  
Services

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M1

[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date:

AUG 28 2006

[SRC 99 105 50354]

IN RE:

Applicant:

[REDACTED]

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 California Service Center. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. Wiemann".

for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant claims to be a native and 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 director denied the application after determining that the applicant had pleaded guilty to felony charge(s) and was, therefore, ineligible for TPS. The director also determined that the charge was a crime involving moral turpitude, thereby rendering the applicant inadmissible.

On appeal, the applicant states that he was attacked by a United States citizen "in 2001," and was defending himself. He states that he did not understand the charge against him and, in order to avoid serving jail time, says he was advised to plead guilty. He believes that the denial of his TPS renewal is unfair because of these circumstances. In support of the appeal, the applicant submits additional evidence consisting of: a partial copy of the December 16, 2003, Notice of Intent to Deny; the Probable Cause Statement and the Criminal Report Affidavit/Notice to Appear, regarding the felony charges lodged on August 4, 2000, for Aggravated Battery, Statute/Ordinance # 784.045; a partial copy of the State of Florida vs. [REDACTED] Thirteenth Judicial Circuit, County of Hillsborough, Florida, State Attorney document, [REDACTED] Felony Division, dated October 3, 2000, charging Count One: Aggravated Battery (Deadly Weapon) F.S. 784.045, and Count Two: Aggravated Assault F.S. 784.021; and, the December 10, 2003, letter from the Florida Department of Corrections, terminating the applicant's supervision in case number 00-13188.

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 of denial, dated January 15, 2004, clearly advised the applicant that any appeal must be properly filed 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 February 17, 2005. The appeal, however, was not received at the Texas Service Center until April 22, 2005.

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

It is noted that an alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors [as defined at 8 C.F.R. § 244.1] committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

The record reveals the following offenses:

- (1) On August 4, 2000, the applicant was arrested by the Hillsborough County Sheriff's Office [Florida] and was charged with Aggravated Battery, a Felony;

- (2) In the 13 Circuit Court, Tampa, Florida, on October 3, 2000, the data was amended to reflect Count One: Aggravated Battery (Deadly Weapon) F.S. 784.045, a 1<sup>st</sup> Degree Felony, and Count Two: Aggravated Assault F.S. 784.021, a 3<sup>rd</sup> Degree Felony; and,
- (3) On December 11, 2000, the applicant pleaded guilty, and adjudication was withheld, to Charges One and Two as identified above.

It is noted that the record reflects that the applicant is ineligible for TPS due to his criminal record of at least one felony conviction, detailed above. 8 C.F.R. § 244.4(a).

It is also noted that the Federal Bureau of Investigation (FBI) fingerprint results report reflects that the applicant has another record of proceedings under file number A 71 638 172. Review of this record reveals that the applicant was apprehended on October 6, 1990, by the United States Border Patrol at the El Paso, Texas, airport after entering into the United States on or about that date. At that time, the applicant gave his name as [REDACTED] and indicated his place of birth and of citizenship as El Salvador. On December 10, 1990, the Immigration Judge, El Paso, Texas, ordered the applicant deported *in absentia* to El Salvador.

On January 20, 1991, the applicant was apprehended by the United States Border Patrol while attempting entry into the United States at or near San Ysidro, California. At that time, the applicant gave his name as [REDACTED] and indicated his place of birth and of citizenship as El Salvador. On January 23, 1991, the applicant was released on his own recognizance pending a hearing.

The applicant was again encountered by the United States Border Patrol at the El Paso, Texas, airport on or about June 20, 1993, at which time he indicated that he had entered the United States without inspection on that date. The applicant again gave his name as [REDACTED] and indicated his place of birth and of citizenship as El Salvador. On August 27, 2003, the Immigration Judge, El Paso, Texas, ordered the applicant deported *in absentia* to El Salvador.

Again on December 8, 1993, the applicant was apprehended by the United States Border Patrol while attempting entry into the United States at or near Nogales, Arizona. At that time, the applicant gave his name as [REDACTED] and indicated his place of birth and of citizenship as El Salvador. The record reflects that the applicant was deported to El Salvador via Los Angeles, California, on March 10, 2004, following the January 12, 1994, order of deportation to El Salvador by the Immigration Judge, Phoenix, Arizona.

It is also noted that the applicant has not conclusively established his nationality and identity. The record contains a photocopy of the biographic pages of a Honduran passport issued on July 7, 1999, by the Consulate General, Miami, Florida; a Honduran tarjeta dated August 31, 1993; and, a Honduran birth certificate indicating that it was issued on February 15, 1999, all in the name [REDACTED]. Under the applicant's other record of proceedings, the record contains an El Salvadoran passport, indicating that it was issued on May 22, 1990; an El Salvadoran cedula issued on February 23, 1993; and an El Salvadoran tarjeta issued on July 13, 1990, all in the name of [REDACTED].

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The appeal is rejected.