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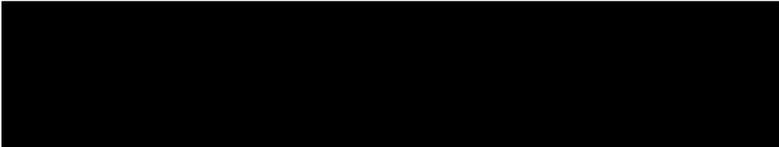
DATE: OCT 16 2006

[EAC 03 228 51914]

[EAC 06 035 50758 Motion]

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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 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 because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite period and eligibility for late registration.

The appeal from the director's decision was dismissed on October 4, 2005, after the Director of the AAO also concluded that the applicant had failed to establish continuous residence and continuous physical presence in the United States during the requisite periods. On motion to reopen, the applicant reasserts his claim of eligibility for TPS and submits additional evidence in an attempt to establish continuous residence in the United States since December 30, 1998 and continuous physical presence in the United States since January 5, 1999.

It is noted that in the October 4, 2005 decision, the Director of the AAO addressed the applicant's pending Petition for Alien Relative (Form I-130) and found the applicant eligible for late registration; however, there was no evidence submitted of the I-130 or the Application to Adjust Status (Form I-485) being approved.

Additionally, it is noted that the record of proceedings contains a September 11, 1999 letter from the applicant's spouse, [REDACTED], stating that the applicant could not attend a September 15, 1999 interview in connection with an application for adjustment of status because "he is abroad at the present." The applicant's spouse indicated the applicant had departed the United States on August 23, 1999 to Honduras and that they were "preparing ourselves to transfer this case to Honduras and finish the formal interview there." Therefore, the applicant cannot meet the continuous residence and continuous physical presence criteria 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 is dated October 4, 2005. Any motion to reopen 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 motion to reopen, in this case, should have been filed on or before November 7, 2005. The motion to reopen was received at the Vermont Service Center on November 10, 2005.

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 October 4, 2005, is affirmed.