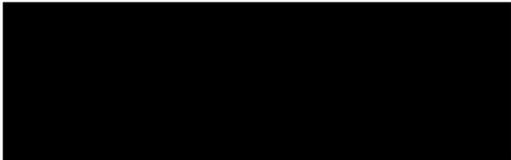


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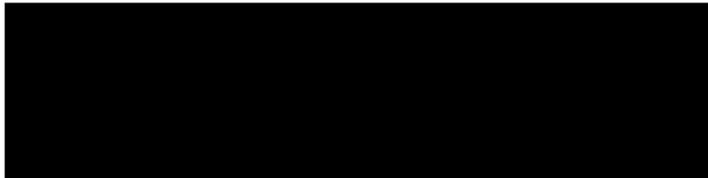
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FILE: [REDACTED]
[WAC 05 095 71214]

Office: CALIFORNIA SERVICE CENTER

Date: **SEP 25 2006**

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, California Service Center, and 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 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 on August 6, 2001, the applicant filed an earlier TPS application under Citizenship and Immigration (CIS) receipt number SRC 01 255 56328. The record also contains a TPS application stamped as received on July 3, 2000, which does not indicate that the required fee was paid, and does not contain a receipt number. The Texas Service Center Director denied the initial TPS application due to abandonment on October 8, 2002, because the applicant failed to respond to a request for additional evidence to establish his eligibility for TPS. The applicant had been requested to submit evidence establishing his eligibility for late initial registration, nationality, and identity. He was also requested to submit certified final court dispositions for charges appearing in his Federal Bureau of Investigation (FBI) fingerprint results report. The record does not contain a response from the applicant. Because the application was denied due to abandonment, no appeal was available; the applicant could, however, have filed a motion to reopen within 33 days from the date of the decision. The record does not reflect that the applicant filed a motion to reopen the denial decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 3, 2005, and indicated that this was an application for re-registration or extension of TPS benefits.

The director denied this application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant asserts that he applied for TPS in 1999, and submits additional evidence in an attempt to establish his continuous residence and continuous physical presence in the United States.

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 June 28, 2005, 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 August 1, 2005. The appeal, however, was not received at the California Service Center until August 16, 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 December 9, 1993, the applicant was arrested by the Metro Dade Police Department [Florida] and was charged with Charge 001- Larceny-Petty, a Misdemeanor;
- (2) On October 1, 2003, the applicant was arrested by the Metro Dade Police Department [Florida] and was charged with Charge 001-County Ordinance Violation: Trespass County Ordinance, and received a disposition of Guilty/Convicted on October 2, 2003.

The applicant provided a Metro-Dade Police Department arrest/offense incident record dated July 23, 2001, indicating two misdemeanor cases, [REDACTED] and [REDACTED], under the name [REDACTED]. The applicant has failed to provide the final court dispositions of all of his arrests detailed above. However, it appears that the applicant may be ineligible for TPS due to his record of two or more misdemeanor convictions, detailed above. 8 C.F.R. § 244.4(a). This issue must be addressed in any future proceedings as it has bearing on his eligibility for TPS.

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.