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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

M1



FILE: [redacted] Office: TEXAS SERVICE CENTER Date: DEC 17 2007
[redacted] incorporated herein]
[SRC 02 208 56913]

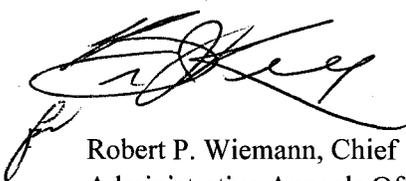
IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:
[redacted]

INSTRUCTIONS:

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


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, (TSC), due to abandonment on October 9, 2002. On October 23, 2002, the applicant filed a timely motion to reopen, which was granted by the TSC Director on December 20, 2002, in order to permit the applicant to submit all of the requested evidence. The applicant responded to the reopening of his TPS application by submitting additional evidence under the cover of another Form I-290B, Notice of Appeal, dated January 6, 2003.

On January 17, 2003, the TSC Director dismissed the applicant's January 2003 response as a Motion to Reopen and Reconsider, incorrectly indicating the date of the October 2002 Motion to Reopen, but listing the evidence that was included with the January 2003 response. The applicant subsequently filed a timely appeal on February 3, 2003, to the TSC Director's decision of January 17, 2003.

While the appeal was pending, the TSC Director issued another Denial of Service Motion to Reopen and Reconsider on April 22, 2003, finding that the applicant was ineligible for late registration. A subsequent appeal was dismissed by the Chief, Administrative Appeals Office (AAO) on July 5, 2005. A second untimely appeal to the TSC Director's April 22, 2003 determination was submitted while the first appeal was still pending. The second untimely appeal is now before the AAO. The second 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 and a motion to reopen because the applicant had failed to respond to a request for additional evidence.

The first appeal from the TSC Director's April 22, 2003 decision was dismissed on July 5, 2005, after the Director of the AAO also concluded that the applicant was not eligible for late initial registration. AAO also determined that the applicant had not established that he had continuously resided in the United States since December 30, 1998, had been continuously physically present since January 5, 1999, and had conclusively established his nationality.

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).

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, this second appeal to the TSC Director's April 22, 2003 determination should have been filed on or before May 26, 2003. The appeal was received at the Texas Service Center on May 2, 2004.

It is noted that the applicant's Federal Bureau of Investigation fingerprint results report shows that he was arrested by the Metro-Dade Police Department in Florida, for driving under the influence on December 4, 1998 and for

“BW Commercial Vehicle Markings Violation Count” on August 22, 2005. However, the final court dispositions of these arrests are not included in the record of proceeding.

Additionally, in removal proceedings held on January 26, 2007, an Immigration Judge in Miami, Florida, ordered the applicant deported “*in absentia*” to Honduras.

An alien applying for TPS has the burden of proving that he or she is eligible under the provisions of section 244 of the Act. The applicant has failed to establish his eligibility for TPS.

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

ORDER: The appeal is rejected.