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U.S. Citizenship
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Services

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FILE:



Office: California Service Center

Date:

JUN 25 2007

[WAC 05 083 73218]

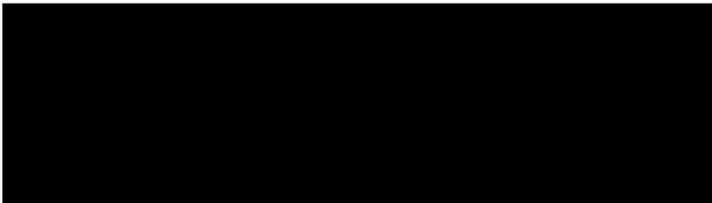
IN RE:

Applicant:



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

ON BEHALF OF PETITIONER:



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.

for Robert P. Wiemann, Director
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 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 record reveals that the applicant filed an initial TPS application on August 19, 1999, under CIS receipt number SRC 99 256 52263. The Texas Service Center director denied that application due to abandonment, on November 26, 2002, because the applicant failed to respond to a March 4, 2002 notice of intent to deny. A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The record reflects that the applicant filed a late motion to reopen on November 20, 2003. The director reopened the case and requested additional evidence on February 24, 2004. However, the director again denied the application for abandonment, on October 13, 2004, as the applicant failed to submit the requested evidence to establish his eligibility for TPS.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 22, 2004, under CIS receipt number WAC 05 083 73218, and indicated that he was re-registering for TPS. The director, California Service Center, denied that application on July 23, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to re-register for TPS.

An appeal that is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has 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 is dated July 23, 2005. 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 26, 2006. The California Service Center director's denial notice specifically stated that the appeal must be filed with its office. Counsel, nevertheless, sent the appeal to the Texas Service Center. Counsel, by his own admission, sent the appeal to the wrong office, contrary to the director's instructions. However, counsel's admitted error in filing the appeal does not obviate rejection of the appeal as untimely. The appeal is not considered properly received until it is received by the Service Center that rendered the unfavorable decision. The appeal was properly received at the California Service Center on August 31, 2005.

It is noted that the applicant's Federal Bureau of Investigation (FBI) fingerprint results report reflects that the applicant was arrested on April 2, 1999, by the City/County Bureau of ID – Raleigh, North Carolina, and charged with:-

- Charge 1: ASSAULT – DEADLY WAEPON, a misdemeanor;
- Charge 2: COMMUNICATING THREATS, a misdemeanor; and,
- Charge 3: INJURY TO PERSONAL PROPERTY, a misdemeanor.

The AAO notes that the final court disposition for this arrest is not in the record of proceeding. CIS must address this and any other arrests and/or any conviction(s) in any future proceedings.

An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act.

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

ORDER: The appeal is rejected.