



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **SEP 24 2007**
[WAC 05 124 70422]
[WAC 07 107 50203, motion]

IN RE: Applicant: [REDACTED]

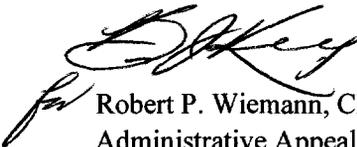
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

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


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was withdrawn by the Director, California Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion to reopen will be dismissed.

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 director withdrew the application because the applicant had been convicted of two or more misdemeanors in the United States.

The appeal from the director's decision was dismissed on May 24, 2006, after the Director of the AAO also concluded that the applicant had failed to establish his eligibility for TPS. On motion to reopen, the applicant states that he has been in the United States since 1997 and has provided all of the requested evidence.

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, dated May 24, 2006, clearly advised the applicant that any motion to reopen must be filed within thirty days. Coupled with three days for mailing, the motion, in this case, should have been filed on or before June 26, 2006. The motion to reopen was received at the California Service Center on March 5, 2007.

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 May 24, 2006, is affirmed.