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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

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FILE:

[REDACTED]

Office: California Service Center

Date: **APR 28** 2008

[WAC 05 064 75787J
[EAC 07 208 51524 - motionJ

INRE:

Applicant:

[REDACTED]

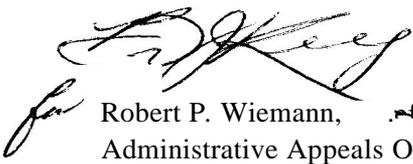
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.c. § 1254

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 California Service Center. Any further inquiry must be made to that office.


for Robert P. Wiemann, *af*
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC). A subsequent appeal was dismissed by the Chief, 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 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 his initial TPS application on June 10, 2002, under Citizenship and Immigration Services (CIS) receipt number SRC 02 197 55648. That application was denied on August 28, 2003.

The applicant filed the current Form 1-821, Application for Temporary Protected Status, on December 9, 2004, and indicated that he was re-registering for TPS. The CSC director denied the re-registration application because the applicant was convicted of Aggravated Battery.

The appeal from the CSC director's decision was dismissed on January 31, 2007, after the AAO concluded that the applicant was convicted of a felony, and therefore, he is ineligible for TPS. On July 13, 2007, the applicant filed a motion to reopen.

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.FR § 103.5a(b).

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 March 5, 2007. The motion to reopen was received by CIS on July 13, 2007, after the prescribed timeframe.

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 January 13, 2007, is affirmed.