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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JAN 03 2008

[WAC 05 090 82387]

INRE:

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

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. **Wiemann**, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by ~~the~~ Director, California Service Center (CSC). A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The previous decision of the AAO will be affirmed and the motion to reopen will be dismissed.

The applicant is a native and citizen of Honduras who is applying for **Temporary Protected Status** (TPS) under section 244 of the Immigration and Nationality Act (the **Act**), 8 U.S.C. § 1254.

The applicant filed an initial Form **I-821**, Application for **Temporary Protected Status**, under receipt number SRC 04 120 54767 after the initial registration period had closed. The Director, Texas Service Center (**TSC**), denied ~~that~~ application on May **20, 2004**, because the ~~applicant~~ **failed** to establish his eligibility for TPS. The TSC Director noted ~~that~~ the applicant's appeal was late and consequently treated it as a motion to reopen. The director denied the motion on September **7, 2004**, because the applicant had **failed** to demonstrate that his motion qualified as a motion.

The applicant filed the current Form I-821 on December **29, 2004**, and indicated that he was re-registering for TPS.

The CSC Director denied the ~~re-registration~~ application on July 23, **2005**, because the applicant's initial TPS application had been denied and ~~the~~ applicant was not eligible to apply for re-registration for TPS. An appeal was dismissed by the Director, AAO, on May **3, 2006**, who **affirmed** the CSC Director's finding and also found that the applicant was ineligible for late initial **registration** and that he had also **failed** to establish that he had continuously *resided in* the **United States** since December **30, 1998**, and had been continuously physically present since January **5, 1999**.

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 AAO decision was **dated** May 3, 2006. Any motion to reopen must be filed within thirty days after service of the decision. 8 C.F.R. § 103.5(a)(1)(i). Coupled with three days for **mailing**, the **motion**, in this case, should have been filed on ~~or~~ before June 5, 2006. The motion to reopen was received on February **15, 2007**.

It is noted that the applicant's Federal Bureau of Investigation fingerprint results report shows that on July 15, 2007, the applicant was arrested for: (1) criminal mischief involving property **damage** valued at over \$200 and less than \$1,000, a misdemeanor, **and** (2) battery, a misdemeanor, by the Miami, Florida, Police Department. **However**, the final court disposition(s) of this arrest is not included in the record of **proceeding**.

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 because the motion to reopen was not filed within the required time period. Accordingly, the motion to reopen is dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The appeal is dismissed.