



U.S. Citizenship
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JUN 02 2008

[WAC 08 025 52120, motion]

[WAC 05 091 73878]

INRE:

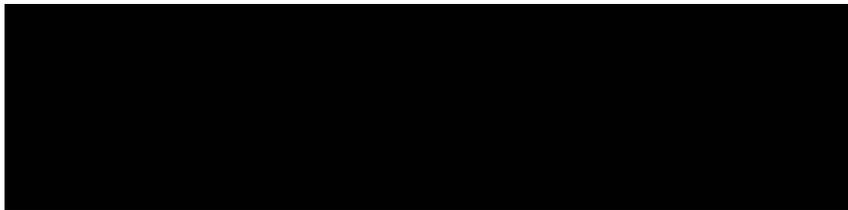
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont 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 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 will be dismissed.

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 applicant filed an initial Form 1-821, Application for Temporary Protected Status, under receipt number SRC 99 192 54131 during the initial **registration** period. The CSC Director denied that application on October 21, 2005, because the applicant had not met the continuous residence and continuous physical presence requirements for TPS. The applicant did not appeal the director's decision.

The applicant filed a subsequent Form 1-821 on December 30, 2004, and indicated that he was re-registering for TPS. The CSC Director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

The appeal from the director's decision was dismissed on March 5, 2007, after the Chief of the AAO also concluded that the applicant had failed to establish his eligibility for TPS. On motion to reopen, the applicant reasserts his claim of eligibility for TPS.

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 March 5, 2007. 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 April 9, 2007. The motion to reopen was received on October 25, 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 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 motion to reopen is dismissed.