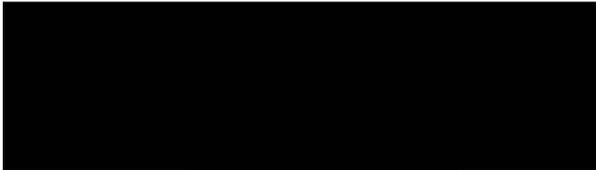


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U.S. Citizenship
and Immigration
Services

PUBLIC COPY



FILE:

OFFICE: Vermont Service Center

DATE:

MAR 032008

[WAC 05 098 78705]

[EAC 08 012 52903, *motion*]

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 office that originally decided your case. Any further inquiry must be made to that office.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. 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 a Form 1-821, Application for Temporary Protected Status, after the initial registration period under CIS receipt number SRC 03 197 55071. The director denied that application on November 13, 2003, after determining that the applicant had failed to establish he was eligible for late initial registration. The record does not reflect that the applicant appealed the director's decision.

The applicant filed the current Form 1-821, Application for Temporary Protected Status, on January 6, 2005, and indicated that he was re-registering for TPS. The director denied the re-registration application on August 9, 2005 because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. A subsequent appeal from the director's decision was dismissed on July 24, 2006, after the Chief of the AAO also concluded that the applicant was not eligible to apply for re-registration or renewal. The applicant submitted a motion to reopen which was dismissed on August 2, 2007, because the applicant failed to articulate any basis of eligibility or address the reasons for the dismissal of the application.

On motion to reopen, the applicant asks CIS to reopen his case and give him the opportunity to be legal in the United States. He also states that he has been in the United States since 1997 and has provided to all of the requested evidence. The applicant also submits evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

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 was dated August 2, 2007. Any motion to reopen must have been 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 September 5, 2007. The motion to reopen was received on October 11, 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 August 2, 2007, is affirmed.