

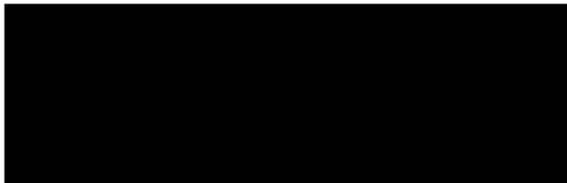
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: MAR 11 2008

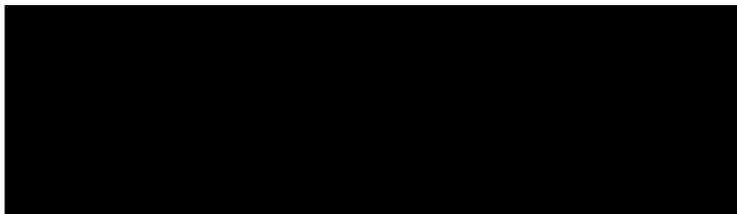
and

[WAC 05 236 50759, appeal]

[WAC 05 097 77012]

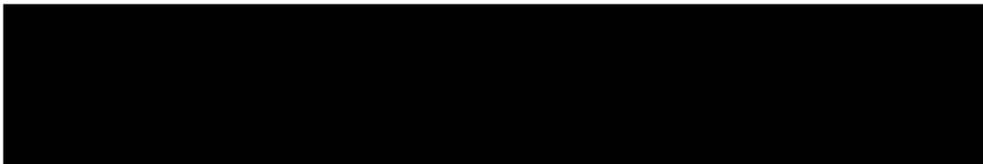
INRE:

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 California 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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant claims to be 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 applicant filed an initial Form 1-821, Application for Temporary Protected Status, under receipt number SRC 99 181 50254 during the initial registration period. The Director, Texas Service Center, denied that application on January 28, 2004, after determining that the applicant had abandoned his application by failing to respond to a Notice of Intent to Deny.

Since the application was denied due to abandonment, there was no appeal available; however, the applicant could have filed a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe. After review of the record, the Chief, AAO, affirms the director's denial decision.

The applicant filed the current Form 1-821 on June 5, 2006, and indicated that he was re-registering for TPS.

The 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.

It is noted that the applicant has provided insufficient evidence to establish that he is a national or citizen of Honduras. He has provided a copy of his birth certificate along with an English translation. However, a birth certificate alone does not establish nationality. The record does not contain any photo identification such as a passport  
fnt. 8 C.F.R § 244.2(a)(1). As indicated above, the applicant was first known to us as  
land claimed to be a native and citizen of Honduras. He was de orted to Honduras under that name on June 4, 1996. He then became known to us as  
and claimed to be a native and citizen of Mexico. H  
under that name on July 19, 1997. Now the applicant is proceeding under the name o  
and claims to be a native and citizen of Honduras. Absent primary documents such as a passport and/or national identity documentation, the applicant's true nationality and citizenship status remains unresolved.

In order to properly file an appeal, the regulation at 8 C.F.R § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days after the service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. See 8 C.F.R § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. See 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued the decision on July 23, 2005. It is noted that the director properly gave notice to the applicant that he had 33 days to file the appeal. However, it was received by the director on August 26, 2005, 34 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. The regulation at 8 C.F.R § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements

of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

A motion to reopen must state the new facts to be provided in the reopened proceeding and be support by affidavits or other documentary evidence. 8 C.F.R § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R § 103.5(a)(3). A motion that does not meet applicable requirement shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

As the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

ORDER: The appeal is rejected.