



U.S. Citizenship
and Immigration
Services

Division of Person

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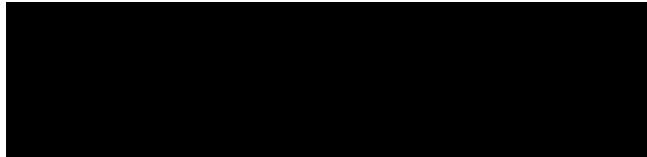
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FILE: [REDACTED]
[SRC 99 142 53109]

Office: TEXAS SERVICE CENTER Date: JUN 27 2005

IN RE: 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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

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 director withdrew approval of the applicant's previously approved TPS application and denied the application because she found that the applicant had failed to submit requested court documentation relating to all charges on his criminal record.

An appeal that is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee accepted will not be refunded. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

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 record reflects that the applicant filed his initial application for TPS with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on March 15, 1999. The applicant's TPS application was approved on June 13, 2000.

The director's decision of withdrawal and denial dated December 4, 2003, clearly advised the applicant that any appeal must be properly filed within thirty days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). Coupled with three days for mailing, the appeal, in this case, should have been filed on or before January 6, 2004. The appeal, however, was not received at the Texas Service Center until March 24, 2004. It is noted that the applicant submitted a photocopy of a Texas Service Center mailing address bearing the postmark February 2, 2004, and a handwritten notation that the decision letter was received on that date; had the letter been received on that date, the appeal, nevertheless, was untimely as it was filed more than 30 days beyond this postmarked date.

It is noted that the evidence submitted on appeal would not have overcome the finding of the director. On appeal, the applicant admits that he has made mistakes, but states that he is older and wiser now, and that there are "no excuses." He states that it is important for him to maintain TPS and his employment authorization so that he can provide for his family in an honest manner. The applicant does not submit any additional evidence, including the requested final court dispositions, in support of the appeal.

The Federal Bureau of Investigation (FBI) fingerprint results report pertaining to the applicant's fingerprints, reveals the following offenses:

- 1) On April 4, 2001, the applicant was arrested by the Hialeah [Florida] Police Department and charged with:
 - Charge 001- Burglary- Burglary with Assault or Battery, Statute/Ordinance FL810.02(2A), a 1st Degree Felony;
 - Charge 002 – Aggravated Battery, Statute/Ordinance FL784.045, a 2nd Degree Felony;

Charge 003 – Aggravated Battery, Statute/Ordinance FL784.045, a 2nd Degree Felony;
Charge 004 – Kidnapping, Statute/Ordinance FL 787.01(2), a 1st Degree Felony;
Charge 005 – Obstructing Justice – Tamper with Witness Threaten, Statute/Ordinance
FL914.22(1), a 3rd Degree Felony.

2) The supplemental arrest data indicates the 11th Circuit Court, Miami, Florida, disposition date May 4, 2001:

Charge 001- Burglary- Burglary with Assault or Battery, a 1st Degree Felony, Guilty Plea and Adjudication Withheld;
Charges 002 and 003 – Aggravated Battery, 2nd Degree Felony, disposition- Dropped/Abandoned;
Charge 004 – Kidnapping, 1st Degree Felony, disposition- Dropped/Abandoned;
Charge 005 – Obstructing Justice – a 3rd Degree Felony, disposition not available; and, Tamper with Witness Threaten, a 3rd Degree Felony, Guilty Plea and Adjudication Withheld.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines “felony” and “misdemeanor:”

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.

It appears that the applicant has pleaded guilty to two felony criminal charges. These offenses must be addressed in any future proceedings before CIS.

Based upon the applicant's failure to file a timely appeal, the appeal will be rejected.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The appeal is rejected.