



U.S. Citizenship
and Immigration
Services

PUBLIC COPY
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



MJ

FILE: [REDACTED]
[WAC 05 054 71395]

Office: CALIFORNIA SERVICE CENTER

Date: APR 27 2007

IN RE: Applicant: [REDACTED]

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 "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on a motion to reopen. The motion 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 applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number SRC 02 189 56152 after the initial registration period had closed. The director denied that application on July 28, 2002, because the applicant failed to establish his qualifying continuous residence and that he was eligible for filing his TPS application after the initial registration period from July 5, 1999 to August 20, 1999. On August 26, 2002, the applicant filed an appeal from the denial decision. That appeal was dismissed by the AAO on January 30, 2003. The applicant submitted two untimely appeals that were treated as motions to reopen and denied by the Director, TSC.

The applicant filed the current Form I-821, on November 23, 2004, 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. A subsequent appeal was dismissed by the Director, AAO, on May 4, 2006, where it was again determined that the applicant was not eligible for late initial registration. It was also found that he had 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. This is a motion to reopen this latest AAO determination. The applicant again asserts his claim of eligibility for TPS.

The applicant filed a subsequent Form I-821, on December 20, 2005, and indicated that he was re-registering for TPS. The director denied the re-registration application on November 3, 2006 because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration 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 May 4, 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 6, 2006. The motion to reopen was received on June 19, 2006.

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 and the previous decision of the AAO dated May 4, 2006, dismissing the appeal is affirmed.