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U.S. Citizenship
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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: **MAR 26 2007**

[WAC 05 076 76556]

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:



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 "R. Wiemann".

for 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 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 record reveals that the applicant filed a TPS application during the initial registration period on May 6, 1999, under Citizenship and Immigration Services (CIS) receipt number EAC 99 201 50493. The Director, Vermont Service Center (VSC), denied that application based on abandonment on October 18, 2000, because the applicant had failed to respond to a request to submit additional evidence.¹ On April 25, 2002, the applicant filed a motion to reopen his case. The VSC director dismissed the motion on November 7, 2002, because the motion was not filed within the required 33 days, and the applicant had not demonstrated that the delay was reasonable and was beyond his control.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 15, 2004, and indicated that he was re-registering for TPS. The Director, California Service Center, denied the re-registration application on March 28, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant asserts that CIS had mistakenly indicated that he is a national of El Salvador, and that he had been denied TPS based on late registration. He requests that this matter be resolved. A review of the record of proceeding, however, failed to reveal that the director had erroneously listed the applicant as an El Salvadoran or that his TPS application was denied based on late registration.

An appeal that is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has 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 director's decision of denial, dated March 28, 2005, 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 May 2, 2005. The appeal was received at the California Service Center on May 9, 2006.

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

¹ The applicant was requested on June 19, 2000, to submit evidence to establish (1) that he is a citizen or national of Honduras, and (2) evidence to show continuous physical presence in the United States from January 5, 1999, to the date of filing the application. He was advised to disregard the earlier request for evidence dated March 31, 2000, because that request may have been incorrect. He was also advised that evidence in the record, including the applicant's response to the previous request, was still not enough to allow the Service to grant TPS.

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.