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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

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**JAN 08 2010**

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date:  
[LIN 00 236 50494]  
[EAC 08 175 51255 - APPEAL]

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:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. An untimely appeal was treated as a Motion to Reopen and was denied by the Director, Vermont Service Center. The applicant appealed the director's decision on the motion and it is now before the Administrative Appeals Office on appeal. The appeal 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 director withdrew the applicant's status after determining that the applicant had been convicted of two misdemeanors in the United States.

The applicant filed a motion to reopen that the Director, Vermont Service Center, denied after finding that the applicant had failed to overcome the grounds for denial.

On appeal, counsel for the applicant stated that the director erred in determining that the appeal was untimely filed. According to counsel, the decision was dated January 15, 2008, but was actually not mailed until January 22, 2008. However, counsel offers no evidence in support of her claim that the director's decision was mailed three days after the stamped date on the notice. Counsel also contends that the applicant is in the process of attempting to set aside one of the misdemeanor convictions. Counsel states that a final decision on this motion is pending and U.S. Citizenship and Immigration Services (USCIS) should wait until a decision on the motion has been received before making a final decision on the TPS application. Counsel has provided copies of the Petition for Writ of Error and Memorandum in Support of Petition for Writ of Error Coram Nobis dated February 14, 2008; and the Memorandum in Opposition to Petition for Writ of Error Coram Nobis dated May 7, 2008, and a Reply Memorandum in Support of Petition for Writ of Error Coram Nobis dated May 16, 2008. However, to date, more than eighteen months later, the applicant and counsel have failed to provide the judge's decision on these petitions. Therefore, the record must be considered complete.

Beyond the director's decision, it is noted that although the applicant has submitted a copy of a birth certificate with English translation, it was not accompanied by photo identification. The applicant has also failed to provide a passport or any national identity document from the alien's country of origin bearing photo and/or fingerprint to establish his nationality and identity. Therefore, the application must be denied on this basis as well.

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 applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

**ORDER:** The appeal is dismissed. The previous decision of the AAO is affirmed