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



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: DEC 13 2007
[WAC 05 106 71842]

IN RE: Applicant: [REDACTED]

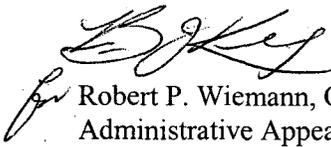
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for re-registration was denied by the Director, California Service Center (CSC), 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 record reveals that the applicant filed a TPS application during the initial registration period on April 29, 1999, under receipt number EAC 99 198 51273. The Director, Vermont Service Center (VSC), denied that application on September 17, 2003, after determining that the applicant was inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related convictions. On October 17, 2003, the applicant filed an appeal from the denial decision. That appeal will be addressed in a separate decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 14, 2005, and indicated that he was re-registering for TPS.

The CSC director denied the re-registration application on June 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.

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).

8 C.F.R. § 103.2(a)(7) states, in part:

An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and....shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable will not retain a filing date.

The CSC director's decision of denial, dated June 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 August 1, 2005. The appeal was not properly received at the California Service Center until August 3, 2005, because the applicant had initially failed to sign the Form I-290B, Notice of Appeal.

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

An alien shall not be eligible for temporary protected status 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. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record indicates that the applicant was convicted in Florida: (1) on April 22, 1994, of unlawful sale or purchase of cannabis, a felony, and unlawful possession of cannabis, a misdemeanor; (2) on February 18, 1994, of possession of stolen property, a misdemeanor; and (3) on April 29, 1994, of lewd and lascivious behavior, a misdemeanor, and resisting arrest without violence, a misdemeanor. The record further indicates that the applicant was arrested: (4) in Florida on January 2, 1995, for resisting an officer without violence; and (5) in Massachusetts on November 25, 2000, for "leave scene of property damage" and "marked lanes violation;" however, the final court dispositions of these arrests are not included in the record.

The applicant is ineligible for TPS due to his one felony and four misdemeanor convictions, and because he is inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act based on his drug-related convictions. Sections 244(c)(2)(B)(i) and 244(c)(1)(A)(iii) of the Act.

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.