

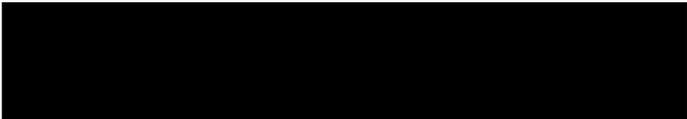
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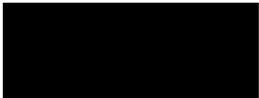
U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: **JUL 30 2007**

[SRC 02 186 53013]
[WAC 05 050 70026]

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 black ink, appearing to read "R. Wiemann".

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center (TSC). The Administrative Appeals Office (AAO) dismissed an appeal from the denial decision. The AAO subsequently dismissed a motion to reopen the case. The matter is now before the AAO on a second motion to reopen. The motion will be dismissed, and the previous decision of the AAO will be affirmed.

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 the initial TPS application on May 29, 2002, after the initial registration period for Hondurans (from January 5, 1999 through August 20, 1999) had closed, under receipt number SRC 02 186 53013. The TSC director denied the application on September 3, 2002, because the applicant had failed to establish that he was eligible for late registration. On September 17, 2002, the applicant filed an appeal from the denial decision. The AAO dismissed the appeal on February 28, 2003, after concluding that the applicant had not submitted any evidence to establish that he was eligible for late registration. The AAO also noted that documentation in the record and also in file [REDACTED] indicates that the applicant entered the United States on or about July 12, 1999; therefore, the applicant could not have established his continuous physical presence in the United States since January 5, 1999. On May 20, 2003, the applicant filed a motion to reopen his case. The AAO dismissed the motion on May 4, 2005, because the motion was not filed within the required 30 days. On June 16, 2005, the applicant filed a second motion to reopen. He requests that his case be reopened and he be given the opportunity to be legal in this country because he has been residing here since 1997 and he has submitted all the documents requested by USCIS.

After a review of the record of proceeding, and as addressed above, it is noted that during the pendency of the second motion to reopen, the CSC director denied the re-registration application¹ on July 23, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration. The applicant appealed that decision of the director on August 24, 2005. The AAO affirmed the CSC director's decision and dismissed the appeal on June 28, 2006.² The applicant's second motion to reopen was pending when the CSC director denied the re-registration application. However, a remand of this case to the director based on premature denial of the re-registration application would not overcome the denial of the applicant's initial TPS application and the motion to reopen, as the record still is devoid of any evidence to establish that the applicant was eligible for late initial registration.

Pursuant to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be proved at the reopened proceedings and be supported by affidavits or other documentary evidence. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). A review of the record reveals that the applicant has presented no new facts or other documentary evidence in support of the second motion to reopen.

Furthermore, pursuant to 8 C.F.R. 103.5(a)(1)(i), any motion to reopen a proceeding before the Service, now, Citizenship and Immigration Services (CIS), filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be

¹ The TPS re-registration application was filed on November 19, 2004, under receipt number WAC 05 050 70026.

² The AAO noted in the decision that the applicant claimed he initially entered the United States on January 20, 1997, he returned to Honduras due to his grandfather's death in April 1999, and he subsequently reentered in July 1999; however, the applicant had not provided any evidence to establish his date of departure from the United States or any evidence that his purported absence was brief, casual or innocent. The AAO further noted that in an attempt to establish his qualifying continuous residence and continuous physical presence, the applicant had submitted several documents that appear to have been altered.

excused in the discretion of CIS where it is demonstrated that the delay was reasonable and was beyond the control of the applicant.

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 decision of the AAO was dated May 4, 2005. Coupled with three days for mailing, the motion, in this case should have been filed on or before June 6, 2005. The motion to reopen was received at the Texas Service Center on June 16, 2005. The applicant has not demonstrated that the delay was reasonable and was beyond his control.

Accordingly, the motion will be dismissed, and the previous decisions of the AAO will be affirmed.

It is noted that the applicant appears to be attempting to prolong the appeal process indefinitely and outside of any remedies remaining available to him.

A review of the record of proceeding including the applicant's other file, [REDACTED] indicates that the applicant, using the name of [REDACTED], was arrested by the United States Border Patrol upon entry into the United States without inspection near Brownsville, Texas, on July 12, 1999. Form I-213, Record of Deportable/Inadmissible Alien, was issued on July 13, 1999. In removal proceedings held on July 31, 2000, the applicant failed to appear; therefore, the Immigration Judge determined that the applicant had abandoned any and all claims for relief from removal and ordered the applicant removed to Honduras *in absentia*. A Form I-205, Warrant of Removal/Deportation, was issued on August 7, 2000.

It is further noted that the applicant's file [REDACTED] contains a copy of Application for Stay of Deportation, OMB No. 1115-0055, signed and dated by the applicant on July 4, 2001, and listed file number [REDACTED]. The original of this application is not contained in that file [REDACTED], nor is there evidence that it was received at the appropriate service center or district office. Even if the application was, in fact, properly received, the application for stay of deportation would not render the applicant eligible for late registration as it was dated (or received) on July 4, 2001, after the initial registration period for Hondurans had closed.

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 motion is dismissed. The decisions of the AAO dated February 28, 2003 and May 4, 2005, are affirmed.