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**U.S. Citizenship
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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **JUL 30 2007**
[WAC05 074 75807]
[SRC 02 185 54850]

IN RE: Applicant: [REDACTED]

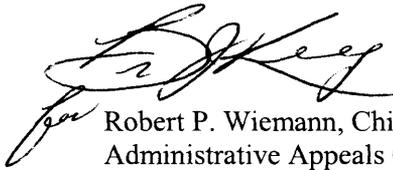
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

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


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC), 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 an initial TPS application on May 28, 2002, under receipt number SRC 02 185 54850. The CSC director denied that application on October 16, 2006, because the applicant had failed to respond to a request to submit evidence to establish: (1) that he was eligible for late registration; (2) his nationality and identity; and (3) that he had continuously resided in the United States since December 30, 1998, and had been continuously physically present from January 5, 1999, to the date of filing the application.

During the interim of the pending initial TPS application (SRC 02 185 54850), the applicant filed the current Form I-821, Application for Temporary Protected Status (WAC 05 074 75807), on December 13, 2004, and indicated that he was re-registering for TPS. The CSC director denied the re-registration application also on October 16, 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 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, because the record as presently constituted establishes that the applicant had not overcome all of the director's findings.

It is noted, however, that the appeal was untimely filed. An appeal that is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee 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 October 16, 2006, 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 November 20, 2006. The appeal was received at the California Service Center on December 4, 2006.

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

It is noted that the applicant, on appeal, has not overcome the director's findings. In a Notice of Intent to Deny (NOID), issued by the Director, Texas Service Center (TSC) on June 19, 2002, the applicant was requested to submit evidence establishing his eligibility for late registration. The CSC director determined that the applicant had failed to respond to the request for additional evidence and denied the application on October 16, 2006. It is noted, however, that the applicant did respond to the NOID. The response was received at the TSC office on July 11, 2002. The applicant submitted evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the requisite period.

On appeal, counsel submits additional evidence in an attempt to establish the applicant's residence and physical presence in the United States, and a copy of a Honduran passport issued to the applicant on March 3, 1996, in Honduras. However, the applicant neither addressed nor submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2).

It is further noted that the applicant submitted a statement, together with an application for employment authorization (Form I-765), received at the TSC office on July 8, 2003, claiming that he first entered the United States during January 1997, and that during 1999 his "mother was coming to the U.S. from Honduras and I went to encounter her to San Diego California. I was scared something would happen to her and that's the reason I went. While that happened, we were caught by INS Officers and a case number was assigned. Unfortunately, I have no evidence to support this situation."

This claim of the applicant is not persuasive. The record of proceeding contains Form I-213, Record of Deportable/Inadmissible Alien, dated April 23, 1999, indicating that on April 22, 1999, the applicant, among one of the eight undocumented immigrants including his mother, was apprehended two miles east of the San Ysidro Port of Entry. At that time, the applicant admitted that he entered the United States without inspection on April 22, 1999, near San Ysidro, California. He stated that he and his mother departed from Honduras on April 2, 1999, and traveled through Guatemala, Belize, and into Mexico, arriving in Tijuana, Mexico, on April 22, 1999, from where they entered the United States without inspection. The applicant was determined to be a juvenile and he was released on his own recognizance in the custody of his mother pending an immigration hearing. In removal proceedings held on June 8, 1999, 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 June 17, 1999.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). The applicant was not in the United States during the requisite periods required to establish continuous residence since December 30, 1998, and continuous physical presence from January 5, 1999, as described in 8 C.F.R. § 244.2(b) and (c). Therefore, the reliability of the evidence furnished in an attempt to establish residence and physical presence offered by the applicant is suspect.

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.