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U.S. Citizenship
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FILE:

[REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER DATE: **OCT 17 200**

[WAC 99 196 51965]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

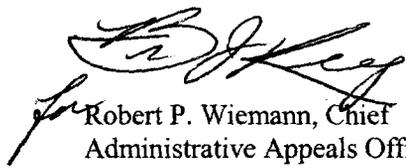
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

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.


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 director denied the application after determining that the applicant had failed to submit the complete court dispositions of his criminal records.

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 November 2, 2000, 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 December 5, 2000. The appeal was received at the California Service Center on December 12, 2000.

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).

It is noted that the applicant, on appeal, has not overcome the director's findings. The applicant submitted an incomplete "Minutes" of the Superior Court of California, County of Los Angeles, dated January 4, 1989, relating to the applicant's charges for violation of California Penal Code (PC) 261.2 [PC 261(a)(2), rape by force/fear, a felony] and PC 243.4 [sexual battery, either a felony or a misdemeanor]. The Minutes indicate that Count 1 was dismissed, and listed the sentences imposed on the applicant for conviction of one of the charges. It is not clear from the Minutes which of the two charges [PC 261(a)(2) or 243.4] the applicant was convicted. On appeal, counsel asserts that the conviction at issue was not a felony, but a misdemeanor. Counsel, however, failed to submit the complete final disposition from the court where the applicant's case was heard to corroborate his assertion. It is further noted that the Federal Bureau of Investigation fingerprint results report and the records of the State of California, Department of Justice, Bureau of Criminal Identification, both indicate that the applicant was subsequently convicted of the felony offense of PC 261(a)(2). However, as noted above, the applicant had failed to submit the complete final court disposition of his arrests and/or convictions.

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.