

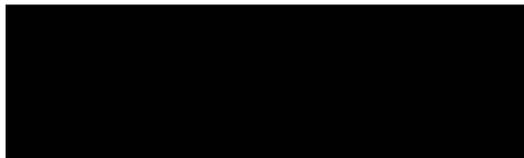
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: APR 02 2008
[EAC 07 12450439, motion]
[WAC 05 067 77800]

INRE: 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: SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: A Notice of Rejected Appeal was issued by the Director, California Service Center (CSC). The matter is currently before the Administrative Appeals Office, (AAO), on a motion to reopen. The motion 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 applicant filed an initial Form 1-821, Application for **Temporary** Protected Status, under receipt number SRC 03 187 54902 after the initial registration period had closed. The Director, Texas Service Center, (TSC), denied that application on October 27, 2003, after determining that the applicant had failed to establish he was **eligible** for late initial **registration**. The applicant filed an appeal from the denial decision. The TSC Director's decision was affirmed by the Director (now Chief) of the AAO on October 8, 2004.

The applicant filed another Form 1-821 under receipt number WAC 0506777800, and indicated that he was re-registering for TPS. The Director, California Service Center, (CSC), denied the **re-registration** application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for **re-registration** for TPS. On December 26, 2006, the Chief of the AAO affirmed the CSC Director's determination. A subsequent appeal was rejected by the CSC Director on February 8, 2007. On motion to reopen, the applicant reasserts his claim of **eligibility** for TPS.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R § 103.5(a)(2).

A motion to reconsider must state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy ... [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R § 103.5(a)(4).

The applicant's motion does not address the applicant's eligibility for late registration. As such, the threshold issue on which the underlying decisions were based has not been overcome on motion.

Furthermore, the CSC Director's notice of rejected appeal was dated February 8, 2007. 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 should have been filed on or before March 13, 2007. The appeal was not properly received at the Vermont Service Center until March 19, 2007.

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.



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ORDER: The motion is dismissed and the previous decisions of the AAO dated October 8, 2004 and December 26, 2006 are affirmed.