

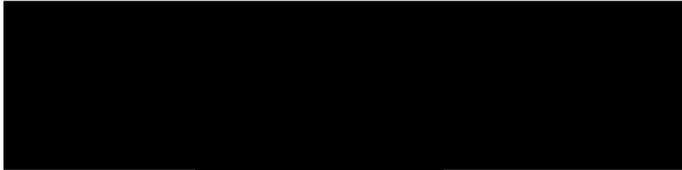
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: JAN I 1 2008
[WAC 05 089 78176]
[WAC 08 009 51614-motion]

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 office that originally decided your case. 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: The application was denied by the Director, California Service Center, and remanded by the Administrative Appeals Office (AAO). The application was again denied by the Director, California Service Center. A subsequent appeal was dismissed by the AAO. A motion to reopen was filed that was subsequently dismissed by the AAO. The matter is again before the AAO on a second motion to reopen. The previous decisions of the AAO will be affirmed and the motion will be dismissed.

The applicant claims to be a 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 because the applicant failed to establish that he was eligible for late registration. The appeal from the director's decision was dismissed on December 5, 2006, as the AAO concurred with the director's finding. The applicant subsequently filed a motion to reopen. The initial motion to reopen was dismissed by the AAO on August 27, 2007, as the issue on which the underlying decision was based had not been addressed or overcome on motion.

On current motion, the applicant reasserts his claim of eligibility for TPS.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) requires that a motion to reopen a proceeding must be filed within 30 days of the underlying decision, and that a motion to reopen must be filed within 30 days except that failure to file a motion to reopen during this period may be excused when the applicant has demonstrated that the delay was reasonable and beyond the control of the applicant.

Pursuant to 8 C.F.R. § 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

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 regulation at 8 C.F.R. § 103.5(a)(1)(iii)(E) requires that a motion to be submitted to the office *maintaining* the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction.

The AAO rendered its decision on August 27, 2007. Any motion to reopen must have been filed within thirty days after service of the decision. 8 C.F.R. § 103.5(a)(1)(i). Coupled with three days for mailing, the motion, in this case, should have been filed on or before October 1, 2007,¹ at the California Service Center pursuant to 8 C.F.R. § 103.5(a)(1)(iii)(E). The applicant, nevertheless, sent the motion to the AAO. The motion was received at the California Service Center on October 11, 2007, 45 days after the date of the AAO's decision. The applicant has not demonstrated that the delay was reasonable and beyond his control. The motion is untimely.

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 motion to reopen was not filed within the allotted time period. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion to reopen is dismissed. The previous decisions of the AAO dated December 5, 2006, and August 27, 2007, are affirmed.

¹ The 33rd day, September 29, 2007, fell on a Saturday.