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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

MI

[REDACTED]

FILE: [REDACTED] OFFICE: Vermont Service Center DATE: **NOV 03 2008**
[WAC 05 124 72066]
[EAC 08 217 51155, *motion*]

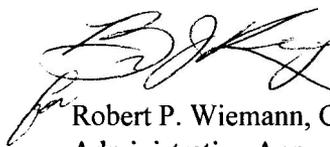
IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT: 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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen 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 record reveals that the applicant filed an initial Form I-821, Application for Temporary Protected Status, on February 1, 2005, under Citizenship and Immigration Services (CIS) receipt number WAC 05 124 72066, after the initial registration period has ended. The Director, California Service Center, denied that application on June 2, 2006, because the applicant had failed to establish her eligibility for late registration. A subsequent appeal was dismissed by the Chief, AAO, on March 5, 2007, after he determined that in addition to the applicant being ineligible for late initial registration, she had also failed to establish her continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. On April 2, 2007, the applicant submitted a motion to reopen her case. The motion was reopened and dismissed by the AAO on September 10, 2007. On October 18, 2007, the applicant submitted a second motion to reopen. That motion was dismissed by the AAO on May 23, 2008, because it was untimely filed. The applicant has now submitted a third motion to reopen.

On motion, the applicant states that she has never been in any kind of trouble with the law in the United States and that she has provided evidence to prove that she has been living in the United States since 1997.

A motion to reopen or reconsider must be filed within thirty days of the underlying decision, except that failure to file during this period may be excused at the Service's discretion when the applicant has demonstrated that the delay was reasonable and beyond the control of the applicant. 8 C.F.R. § 103.5(a)(1)(i).

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 from the AAO was dated May 23, 2008. 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 June 25, 2008. The motion to reopen was received on August 6, 2008.

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 decision of the AAO is affirmed.