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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

M1

FILE:

Office: VERMONT SERVICE CENTER

Date:

JUN 24 2010

IN RE:

Applicant:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. An untimely appeal was treated as a motion to reopen and was denied by the Director, Vermont 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 and the previous decision of the AAO will be affirmed.

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 withdrew the applicant's status after determining that the applicant had been convicted of two misdemeanors in the United States.

Upon review of the record of proceeding, the AAO concurred with the director's conclusion and dismissed the appeal on January 8, 2010.

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

On motion to reopen, the applicant through counsel reasserts his claim of eligibility for TPS and requests that no decision be reached by the AAO until the state of South Dakota issues a final decision on the Writ of Error Coram Nobis that was filed on February 14, 2008. Counsel provides copies of the documents that were previously presented on appeal along with a Notice of Appeal filed on September 18, 2008, before the Circuit Court of the Second Judicial Circuit. However, to date, more than 20 months later, no final decision has been submitted. Therefore, the record still reflects the applicant had been convicted of two misdemeanors that render him ineligible for TPS.

The applicant's motion to reopen consists of a statement and a request for additional time in which to render a final decision. However, the issue on which the underlying decisions were based has not been overcome on motion.

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.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO is affirmed.