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U.S. Department of Homeland Security
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N. W.
Washington, DC 20536



File:



Office: Texas Service Center

Date:

DEC 31 2003

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:

Self-represented

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Cindy N. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. A subsequent appeal was rejected by the Director, Administrative Appeals Office (AAO) because it was untimely. The matter is now before the AAO on a motion to reopen. The previous decision of the AAO will be affirmed and the motion to reopen will be dismissed.

The applicant is a native and citizen of Honduras who indicated on his application that he entered the United States in October 1998 without a lawful admission or parole. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish he was eligible for late registration.

A subsequent appeal from the director's decision was rejected on March 28, 2003, after the Director of the AAO concluded that the appeal had not been filed during the allotted filing period. On motion to reopen, the applicant reasserted his claim of eligibility for TPS and submitted evidence in an attempt to establish his qualifying residence in the United States.

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 to reopen consists of documentation relating to his claim of residence since December 30, 1998, and physical presence since January 5, 1999, in the United States. However, the denial of the application and the rejection of the appeal were not based on a failure to establish qualifying residence and physical presence. Rather, the bases for these decisions were the applicant's failure to file his Application for Temporary Resident Status within the initial registration period and his failure to file a timely appeal from the director's decision. The motion to reopen does not address applicant's eligibility for late registration or the late filing of his appeal. As such, the issues on which the underlying decisions were based have 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 dated March 28, 2003, is affirmed.