

U.S. Department of Homeland Security

Citizenship and Immigration Services

MI

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



OCT 07 2003

File:



Office: Vermont Service Center

Date:

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

PUBLIC COPY

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, Vermont Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be dismissed. The decision of the AAO will be affirmed.

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.

The applicant attempted to file a motion on April 17, 2002; however, it was rejected as the required fee was not provided. The notice dismissing the appeal is very clear in indicating that a fee is required with any motion that is filed. The applicant subsequently submitted a motion with the required fee.

8 C.F.R. § 103.5 (a)(1)(i) requires that 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)(2) requires that a motion to reopen 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)(3) states, in pertinent part:

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)(4) states a motion that does not meet applicable requirements shall be dismissed.

The motion with the required fee was received by CIS on February 14, 2003, ten months after the date of the AAO's decision. The motion was not filed during the requisite time period as stated in 8 C.F.R. § 103.5(a)(1)(i).

The applicant's motion does not include any new facts, evidence, or statement regarding the reason for denial. As such, the issue on which the underlying decision was 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, as the applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the previous decision of the AAO will not be disturbed.

ORDER: The decision of the AAO dated March 28, 2002 is affirmed.