



U.S. Citizenship
and Immigration
Services

10A-1



FILE:



Office: TEXAS SERVICE CENTER

Date:

AUG 04 2004

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 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.

Cindy M. Gomez
Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

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 denied the application because the applicant failed to establish he had: 1) continuously resided in the United States since December 30, 1998; and 2) been continuously physically present in the United States since January 5, 1999.

An appeal that is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee accepted will not be refunded. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

The applicant, on appeal, explained that when he received the denial letter, he realized that the wrong date of entry had been recorded on his Form I-821, Application for Temporary Protected Status, and Form I-765, Application for Employment Authorization. It is noted that the Form I-821 bears only the signature of the applicant, and does not indicate that he received assistance in preparation from another source. The applicant has offered no explanation as to why he personally incorrectly noted his date of entry.

The applicant provided a photocopy of a document entitled "House Lease," for the period of May 1, 1998 through April 30, 1999, and handwritten rental receipts for six months from March through August 1998. The house lease document does not bear any signatures, notary seal, or other evidence of being a legitimate lease document. Furthermore, the printer's date of the lease edition is indicated as 1999, while the notations on the document indicate that the lease was to begin on May 1, 1998, prior to the creation of this edition of the printed lease. It is noted that the receipts for March and April 1998 indicate the money was paid to the landlord designated on the lease document, even prior to date the document indicates the house was leased. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify these inconsistencies. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

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 director's decision of denial, dated July 17, 2003, clearly advised the applicant that any appeal must be properly filed within thirty days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). Coupled with three days for mailing, the appeal, in this case, should have been filed on or before August 20, 2003. The appeal initially was received at the Texas Service Center on August 25, 2003, but was rejected because the fee was made payable to another government agency. The appeal was then resubmitted and was received on September 11, 2003.

It is noted that the record also contains an earlier Notice of Decision dated October 3, 2002, that incorrectly identified the applicant as a citizen and national of El Salvador, although the letter included the correct dates of continuous residence, continuous physical presence, and initial registration period as they pertain to Hondurans.

The director subsequently rendered another decision dated July 17, 2003, on the same application, correctly identifying the applicant's nationality.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

Based upon the applicant's failure to file a timely appeal, the appeal will be rejected.

ORDER: The appeal is rejected.