U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: AUG 3 1 2004

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:

[redacted]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The application was denied by the Director, Texas Service Center, on August 23, 2002. The applicant filed a timely appeal that was reviewed and dismissed by the Director, Administrative Appeals Office (AAO), on March 31, 2003. The case is now before the AAO on a Motion to Reopen. The motion will be dismissed, and the previous denial by the AAO director 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, Texas Service Center, denied the application because the applicant failed to establish he was eligible for late registration. The AAO director dismissed the appeal, affirming the service center director's determination that the applicant had not established that he was eligible for late registration.

On motion, counsel for the applicant asks that the case be re-opened and asserts that: "The required evidence was not material to the issue of eligibility because the evidence of eligibility has been previously submitted." On motion, counsel for the applicant resubmits documents that had previously been entered into the record. Counsel for the applicant also submits new evidence including: the applicant's Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statement for 1999, 2000, and 2001; and, pay stubs dated October 14, 1998, October 28, 1999, November 11, 1999, and November 18, 1999.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states, in pertinent part:

> Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, 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 the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

Furthermore, 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).

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

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 AAO director's decision dismissing the appeal, dated March 31, 2003, clearly advised the applicant that any motion to reopen or reconsider must be properly 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 May 3, 2003. The motion was received at the Texas Service Center on July 2, 2003. It is noted that counsel offered no explanation for the delay in filing the motion to reopen.

Based upon the applicant's failure to file a timely motion, the motion will be dismissed.

It also is noted that the documentation submitted on motion pertains to the applicant's continuous residence and continuous physical presence in the United States during the requisite periods, and not to the reason for denial identified by the service center director and AAO director, as to whether the applicant is eligible for

late registration under the provisions of 8 C.F.R. § 244.2(f)(2). The AAO director discussed the applicant's statements and evidence submitted on appeal asserting that the applicant had attempted to file in 1999. On motion, counsel did not provide any new evidence pertaining to the applicant's eligibility for late registration. In addition, CIS records do not reflect an earlier TPS application under the applicant's name and date of birth.

The applicant has not asserted any new facts to be provided at the reopened proceeding. The applicant has not submitted any evidence on motion to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). For these reasons, the submissions do not meet the requirements of a motion to reopen, and the motion must be denied.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden

ORDER: The motion is dismissed, and the previous denial by the AAO director is affirmed.