

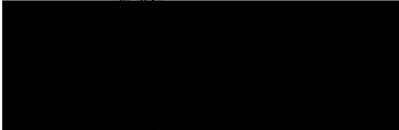
Information disclosed in
prevention of an imminent
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



DEC 14 2004

FILE: [REDACTED]
[SRC 03 010 55600]

Office: TEXAS SERVICE CENTER Date:

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: 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.

for

Robert P. Wiemann, Director
Administrative Appeals Office

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 Nicaragua 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).

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 November 25, 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 December 29, 2003. The appeal was received at the Texas Service Center on January 20, 2004.

It is noted that the statement submitted by the applicant on appeal would not have overcome the finding of the director. On appeal, the applicant states that he has secure employment with a company and that his entire family in Nicaragua is depending on his financial support for their livelihood. The applicant has not submitted any evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the initial portion of the requisite periods through June 24, 2001. On both the Form I-821, Application for Temporary Protected Status, and the Form I-765, Application for Employment Authorization, the applicant certified under penalty of perjury that he had entered the United States on June 24, 2001. The applicant also submitted a photocopy of his Form I-94, Arrival and Departure Record, reflecting this date of entry. The record does not contain the assertion of the applicant nor any evidence to establish that the applicant was present in the United States during the initial period designated by the Attorney General for Hondurans in order to be statutorily eligible to receive TPS. He has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c).

It also is noted that the applicant has provided insufficient evidence to establish his eligibility for late registration. The initial registration period for Nicaraguans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on September 9, 2002.

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

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The appeal is rejected.