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

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**U.S. Citizenship
and Immigration
Services**

[Redacted]

FILE:

[Redacted]

Office: California Service Center

Date:

JAN 21 2004

IN RE:

Applicant:

[Redacted]

PETITION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. §1254

ON BEHALF OF PETITIONER: 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.

Robert P. Wiemann for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office 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 determined that the applicant failed to establish he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

8 C.F.R. § 103.3(a)(2)(v)(B) states:

Untimely appeal--(1) Rejection without refund of filing fee. An appeal which is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

Untimely appeal--(2) Untimely appeal treated as motion. If an untimely appeal meets the requirements of a motion to reopen as described in section 103.5(a)(2) of this part or a motion to reconsider as described in section 103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

On appeal, the applicant states that he sent evidence of his presence and residence in the United States in support of his appeal. According to the applicant, CIS requested more evidence and he responded by providing additional documentation. The applicant also claims that he has other evidence that he used. The applicant's submission does not meet the requirements of a motion.

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 decision, dated March 25, 2003, clearly advised the applicant that any appeal must be filed within thirty days. Coupled with three days for mailing the appeal, in this case, should have been filed on or before April 27, 2003. The appeal, however, was received by CIS on April 29, 2003.

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

ORDER: The appeal is rejected.