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U.S. Citizenship
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JUN 29 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.

for
[Signature]

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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 submit evidence to establish that he was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. 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.

(2) Untimely appeal treated as motion. If an untimely appeal meets the requirements of a motion to reopen as described in § 103.5(a)(2) of this part or a motion to reconsider as described in § 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.

The applicant, on appeal, states he came to the United States in 1998. He submits additional evidence of residence in the United States. In addition, the applicant states that he is eligible for late registration because he was a nonimmigrant when he submitted the application for TPS in July 2002. The applicant states he will provide evidence to show that he was a nonimmigrant; however, he has not submitted such evidence. Thus, the applicant's statement on appeal 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 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 April 28, 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 May 31, 2003. The appeal was dated by the applicant on May 30, 2003 and received on June 2, 2003.

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

It is noted the record contains an Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien, Form I-221S, issued on May 29, 1986, under file [REDACTED] based on the applicant's remaining in the United States without authority, after his nonimmigrant visa had expired.

ORDER: The appeal is rejected