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FILE:  Office: TEXAS SERVICE CENTER Date: **MAY 21 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.

Robert P. Wiemann 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 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 she 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 she did not apply for temporary protected status during the initial registration period because she was unaware of the existence of the TPS program. She also states that she feared that she would be deported to Honduras if she submitted an application. The applicant submits additional evidence of her residence in the United States. The applicant does not address the issue of eligibility for late registration. 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 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 Form I-290B, Notice of Appeal, is very clear in indicating that the appeal is not to be sent directly to the AAO office; but, rather, to the "office which made the unfavorable decision." The applicant, nevertheless, sent her appeal to the AAO. The appeal is not considered properly received until it is received by the service center that rendered the unfavorable decision. The appeal was properly received at the respective service center on May 27, 2003.

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

The burden of proof is upon the applicant to establish 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.

ORDER: The appeal is rejected.