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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: [Redacted]

Office: Texas Service Center

Date: SEP 13 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: Self-represented

PUBLIC COPY

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

Identifying data deleted to
prevent disclosure of information
pertaining to the identity of the individual

DISCUSSION: The application was denied by the Director, Texas Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion to reopen will be dismissed.

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 denied the application because the applicant failed to establish she was eligible for late registration.

The appeal from the director's decision was dismissed on February 4, 2003, after the Director of the AAO also concluded that the applicant had failed to establish her eligibility for TPS. On March 10, 2003, the applicant submitted a motion to reopen. The director of the Texas Service Center determined that the original grounds for denial of her application were correct, and denied the motion to reopen on May 14, 2003.

On October 17, 2003, the applicant submitted a subsequent motion to reopen. On the subsequent motion to reopen, the applicant further asserts her claim of eligibility for TPS.

A motion to reopen or reconsider must be filed within thirty days of the underlying decision, except that failure to file during this period may be excused at the Service's discretion when the applicant has demonstrated that the delay was reasonable and beyond the control of the applicant. 8 C.F.R. § 103.5(a)(1)(i).

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 previous decision from the director of the Texas Service Center was dated May 14, 2003. Coupled with three days for mailing, the motion, in this case, should have been filed on or before June 17, 2003. The motion to reopen was received on October 17, 2003.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the motion to reopen was not filed within the allotted time period. Accordingly, the subsequent motion to reopen will be dismissed and the previous decision of the director will not be disturbed.

ORDER: The motion to reopen is dismissed. The previous decision of the director dated May 14, 2003, is affirmed.