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



U.S. Citizenship
and Immigration
Services

MI



FILE: [Redacted]

Office: TEXAS SERVICE CENTER Date: SEP 17

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.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. An appeal was dismissed by the Director, Administrative Appeals Office (AAO). The matter is again before the AAO on a motion to reopen. The motion to reopen will be dismissed and the previous decision of the AAO Director will be affirmed.

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 service center 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 after the AAO Director determined that the applicant had not overcome the findings of the service center director.

The decision of the AAO Director, dated February 12, 2004, clearly advised the applicant that any motion must be filed within thirty days, as required under 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). Coupled with three days for mailing, the motion, in this case, should have been filed on or before March 16, 2004. The motion, however, was not received by Citizenship and Immigration Services (CIS), until March 19, 2004.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

A motion to reconsider must state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy and must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion that does not meet the applicable requirements shall be dismissed.

The applicant's motion to reopen was not filed within the required timeframe. Moreover, the applicant's motion to reopen consists of documentation relating to her claim of residence since December 30, 1998, and physical presence since January 5, 1999, in the United States. However, the basis for the denial of the application was not a failure to establish qualifying continuous residence and continuous physical presence. Rather, the basis for this decision was the applicant's failure to file her application for Temporary Protected Status within the initial registration period, from January 5, 1999 through August 20, 1999, or to establish her eligibility for late registration, pursuant to the provisions at 8 C.F.R. § 244.2(f)(2). Regarding the issue of filing outside the initial registration period, the applicant states that she did not have the right information and was fearful of being deported. These assertions are unaccompanied by evidence to establish that the applicant met any of the criteria to be eligible for late registration pursuant to the provisions at 8 C.F.R. § 244.2(f)(2). The motion to reopen does not adequately address the applicant's eligibility for late registration. As such, the issue on which the underlying decisions were based has not been overcome on motion.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the petitioner has not provided any new facts or additional

evidence to overcome the previous decision of the AAO Director. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion is dismissed and the previous decision of the AAO Director is affirmed.