



U.S. Citizenship  
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WISCONSIN



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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: 4/8/05  
[SRC 02 209 54606]  
[SRC 03 161 52503 first motion]

IN RE: Applicant: [Redacted]

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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

Aug 02 05 - 79M1294

**DISCUSSION:** The application was denied by the Director, Texas Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The matter is now before the 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 his eligibility for late initial registration.

The appeal from the director's decision was dismissed on February 27, 2003, after the Director of the AAO also concluded that the applicant had failed to establish his eligibility for TPS.

On motion, the applicant reasserts his claim of eligibility for TPS. In addition to resubmitting evidence previously entered into the record, the applicant also submits additional evidence relating to his residence and physical presence in the United States. This evidence consists of: additional money transfer receipts dated in 2000, 2001, and 2002; generic money order receipts dated in 2002 and 2003; a Florida Driver's License receipt dated August 30, 2002; and, United States Postal Service receipts dated in 2002.

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 AAO, dated February 27, 2003, clearly advised the applicant that any motion to reopen must be filed within thirty days. Coupled with three days for mailing, the motion, in this case, should have been filed on or before April 1, 2003. The motion to reopen, however, was not properly received at the Texas Service Center until May 19, 2003.

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

It is also noted that the applicant's motion to reopen consists of documentation relating to his claim of residence since December 30, 1998, and physical presence since January 5, 1999, in the United States. However, the primary basis for the denial of the application and the appeal was not a failure to establish qualifying residence and physical presence. Rather, the primary basis for the decisions was the applicant's failure to file his Form I-821, Application for Temporary Protected Status, within the initial registration period or to establish his eligibility for late registration. The motion does not 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.

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.

**ORDER:** The motion to reopen is dismissed. The previous decision of the AAO dated February 27, 2003, is affirmed.