



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: 03/12/11
[SRC 02 209 54606]
[SRC 03 239 52380 *second motion*]

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. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). While the applicant's first motion to reopen was still pending, the applicant filed this second motion to reopen on September 3, 2003. The matter is now before the AAO. 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 the first motion to reopen, the applicant reasserted his claim of eligibility for TPS.

While the first motion was pending, the applicant filed this second motion, indicating that it was in response to a decision dated August 18, 2003. The record as currently constituted does not contain a decision of that date. The applicant did not submit any additional evidence with the second motion. On motion, he reiterates his earlier statements that he has been living in the United States since 1998, and would like to continue being legal in the United States.

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. This motion to reopen, however, was not properly received at the Texas Service Center until September 3, 2003.

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

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.