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FILE: [REDACTED]
[SRC 03 252 55516]

Office: TEXAS SERVICE CENTER Date: **AUG 19 2005**

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, on March 30, 2004. The applicant filed an untimely appeal on May 11, 2004. The service center director treated this untimely appeal as a motion to reopen and reconsider, and on June 29, 2004, dismissed the submission because it was filed more than 33 days after the issuance of the denial decision. On July 20, 2004, the applicant filed a timely motion to the director's denial. The matter is now before the Administrative Appeals Office (AAO) on motion. The case will be remanded for further consideration and action.

The applicant is a native and citizen of El Salvador 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 that he was eligible for late registration.

The record reveals that the applicant filed his initial TPS application on September 11, 2003. On February 9, 2004, the applicant was requested to submit additional evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his identity and nationality, including an English translation of his previously submitted El Salvadoran cedula. In response, the applicant submitted photocopies of the following documentation: partial Nextel Communications billing remittance forms dated June 19, 2001, December 11, 2001, April 21, 2002, October 22, 2002, and October 29, 2002; a Miami-Dade Water and Sewer Department billing statement dated February 29, 2001; and, a partial statement from an unidentified source dated January 29, 2001.

The director determined that the applicant had failed to establish he was eligible for late registration, and denied the application on March 30, 2004. In an untimely appeal, the applicant stated that he has been living in the United States since the year 2000, and would like to be given "the opportunity to be legal in this country in which with a lot of difficulty [he has] lived here without having a better opportunity in employment." He stated that he did not apply during the initial registration period because he feared he would be deported. In support of the appeal, the applicant resubmitted some of the evidence that had previously been entered into the record. He also submitted a Comcast billing statement dated February 7, 2002; two additional Nextel Communications billing statements; and, an auto repair order dated May 22, 2001.

Because the appeal was untimely, the service center director treated the appeal as a motion to reopen and reconsider, and dismissed the motion because it was untimely.

In the motion that is now before the AAO, the applicant again reiterates that he did not file his initial TPS application during the initial registration period because he lacked information and feared being deported. He states that his initial appeal was late because the mailman delivered the denial letter to the incorrect mailbox and his neighbor did not give him the letter for weeks. He states that he has responded to all the requests made of him and has sent all of the required money orders. He does not submit additional evidence with this appeal.

Because the service center director treated the untimely appeal as a motion to reopen, the applicant's most recent submission is based upon the dismissal of a motion rendered by the service center director, and jurisdiction properly belongs before the service center director. Therefore, the case will be remanded, and the director shall consider the applicant's motion to reopen on the dismissal of the previous late appeal.

It is noted that some of the documentation submitted by the applicant is altered. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded to the director for further action consistent with the above and entry of a decision.