

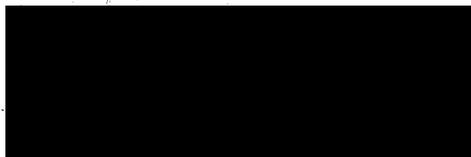
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U.S. Citizenship
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FEB 10 2005

FILE: [REDACTED]
[SRC 02 214 54081]

Office: TEXAS SERVICE CENTER Date:

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.

Cindy M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center on November 18, 2002. The applicant filed a timely appeal that was dismissed by the Administrative Appeals Office (AAO) on April 8, 2003. The applicant filed a motion to reopen on May 27, 2003. The Director, Texas Service Center, issued a decision dated June 27, 2003, in reference to that motion. The applicant filed a subsequent submission on October 21, 2003, that is now before the AAO. The prior motion will be dismissed, the current submission will be rejected, and the prior decision of the AAO director is 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 director, Texas Service Center, denied the application because the applicant failed to establish he was eligible for late registration. The AAO director dismissed the appeal, affirming the service center director's determination that the applicant had not established that he was eligible for late registration.

The applicant filed a motion to reopen on May 27, 2003, in response to the AAO director's decision. The applicant stated that he has been living in the United States since the year 1998. He stated that he was afraid of being deported and did not have money to apply at the time of the initial registration period. The applicant asked that his case be reopened and that he be given: "the opportunity to be legal in this country in which a lot of difficulty I have lived here without having a better opportunity in employment and also to pay my taxes [sic]." The applicant submitted additional evidence in support of the motion.

The record contains a decision dated June 27, 2003, from the Director, Texas Service Center, referencing the applicant's Notice of Appeal filed on "June 27, 2002." Although the date is misstated, it appears this letter refers to the applicant's May 27, 2003, motion to reopen, as it makes reference to the November 18, 2002, denial and the AAO director's dismissal of April 8, 2003. In this decision, the service center director indicated that the appeal: was filed late and was, therefore, rejected; that the submissions did not meet the requirements of a motion to reopen; and, that therefore, the appeal could not be treated as a motion to reopen.

The regulation at 8 C.F.R. § 103.5(a)(1)(ii) provides, in pertinent part, that: "The official having jurisdiction is the official who made the latest decision in the proceeding...." In this instance, the AAO director had made the latest decision, and thus, is the official that must respond to the May 27, 2003, motion to reopen. Therefore, the director erred in addressing a motion that should properly have been before the AAO. The following discussion, therefore, pertains to the applicant's May 27, 2003, motion to reopen.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states, in pertinent part:

Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

Furthermore, 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).

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

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 AAO director's decision dismissing the appeal, dated April 8, 2003, clearly advised the applicant that any motion to reopen or reconsider must be properly filed within thirty days after service of the decision. 8 C.F.R. §103.5(a)(1)(i). Coupled with three days for mailing, the motion, in this case, should have been filed on or before May 12, 2003. The motion, however, was not received at the Texas Service Center until May 27, 2003.

The applicant has failed to submit a timely motion. In addition, the motion does not state new facts to be proved at the reopened proceeding, and is not supported by affidavits or other documentary evidence, in accordance with the regulatory requirements as provided at 8 C.F.R. § 103.5(a)(2). The applicant has not submitted any evidence on motion to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). For these reasons, the submissions do not meet the requirements of a motion to reopen, and the motion of May 27, 2003, must be dismissed.

The applicant filed another "Notice of Appeal" on October 21, 2003. On the notice, the applicant states that he is appealing the decision of September 5, 2003. The applicant asks that his case be accepted and that he be given: "the opportunity to continue being legal in this country in which with a lot of difficulty I have lived here without having the opportunity of being employed and also given the chance to pay my taxes." The applicant does not submit any additional evidence in support of his claim.

The decision of September 5, 2003, is the service center director's denial of the applicant's August 14, 2003, application for extension of his employment authorization benefits. The decision notes that the applicant's initial Form I-821, Application for Temporary Protected Status, was denied in November 2002, and that the corresponding appeal was dismissed by the AAO; therefore, this application must be denied. The director's decision states that there is no appeal to this decision.

As there is no appeal available for this decision, the subsequent submission filed by the applicant on October 21, 2003, must be rejected. It is noted that the applicant appears to be attempting to prolong the appeal process indefinitely and outside of any remedies remaining available to him.

In addition, beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish his qualifying continuous residence and continuous physical presence during the requisite time periods. Much of the documentation submitted appears to have been altered. Therefore, the application must also be denied for these reasons.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden

ORDER: The prior motion is dismissed. The subsequent submission is rejected. The previous denial by the AAO director is affirmed.