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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date: JUN 24 2005

[SRC 01 255 56580]

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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant claims to be 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 her eligibility for late initial registration. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed her initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on August 8, 2001.

An appeal that is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee accepted will not be refunded. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon her, 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 director's decision of denial, dated September 24, 2003, clearly advised the applicant that any appeal must be properly filed within thirty days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). Coupled with three days for mailing, the appeal, in this case, should have been filed on or before October 27, 2003. The appeal, however, was not received at the Texas Service Center until February 12, 2004.

It is noted that the evidence submitted on appeal would not have overcome the finding the director. The applicant has not submitted any evidence to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2) and (g).

In addition, while the applicant certified under penalty of perjury on her Form I-821, Application for Temporary Protected Status, that she had never been under immigration proceedings, the record contains a Federal Bureau of Investigation (FBI) fingerprint results report, pertaining to the applicant's fingerprints. This report reflects that the applicant was apprehended by the United States Border Patrol, while attempting entry into the United States at or near Andrade, California, on or about August 20, 1997. At the time of her apprehension, the applicant gave her name as [REDACTED] presented herself as a native and citizen of Guatemala, and indicated that her parents are Guatemalan. The applicant was released on bond, and her attorney of record requested a change of venue to the Immigration Court, Atlanta, Georgia, based upon an address in Raleigh, North Carolina, provided by the applicant. Her attorney subsequently withdrew as counsel. The record contains the decision of the Immigration Judge, Atlanta, Georgia, dated March 24, 1998, in absentia ordering the applicant removed to Guatemala. Based upon this final order of removal, the record also contains a Warrant of Removal issued at Charlotte, North Carolina, on February 7, 2002. Therefore, the applicant's nationality also has not been satisfactorily established, as she first presented herself as a citizen of Guatemala.

Based upon the applicant's failure to file a timely appeal, the appeal will be rejected.

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 appeal is rejected.