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MAK 03 2005

FILE: [REDACTED]
[SRC 02 161 54523]

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.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center on July 18, 2002. The applicant filed a timely appeal that was dismissed by the Administrative Appeals Office (AAO) on December 26, 2002. The applicant filed a timely motion to reopen on January 28, 2003. The Director, Texas Service Center, issued a decision dated July 1, 2003, in reference to that motion. On August 15, 2003, the applicant subsequently filed an appeal to the service center director's decision. Again, on August 25, 2003, the applicant filed another appeal. These appeals are now before the AAO. The appeals will be rejected, and the prior decisions of the service center and AAO directors will be 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 she 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 she was eligible for late registration.

The applicant filed a motion to reopen on January 28, 2003, in response to the AAO director's decision. The applicant stated that she has been living in the United States since the year 1997. She stated that she was afraid of being deported and did not have money to apply at the time of the initial registration period. The applicant asked that her case be reopened and that she be given an opportunity to live in this country. The applicant submitted additional evidence in support of this motion consisting of photocopies of: Union Planters Bank, of unspecified location, account statements for the periods April 25, 2002 through May 23, 2002, August 25, 2001 through September 25, 2001, and September 25, 2001 through October 25, 2001; a Geico Direct insurance bill dated October 21, 2002; a handwritten Internal Revenue Service, Form W-2, Wage and Tax Statement for 2001; a State of Florida, Certificate of Title dated November 4, 2000, for an automobile; pay stubs bearing no company name or address, dated in December 2000; a Burdines account statement dated December 1, 2000; and, a Form AR-11, Alien's Change of Address Card, dated January 21, 2003. She also resubmitted her Honduran national identity document.

The record contains a decision dated July 1, 2003, from the Director, Texas Service Center, referencing the applicant's January 28, 2003, motion to reopen. In this decision, the director indicated that in a motion to reopen, the applicant must allege new facts, which if proved, would potentially affect the results of the proceedings. In the absence of such evidence, the director stated that the motion to reopen and reconsider must be denied. The director also stated that there is no appeal from this decision.

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 January 28, 2003, motion to reopen.

Nevertheless, the AAO concurs that the January 28, 2003, motion does not state new facts to be proved at the reopened proceeding, and is not supported by affidavits or other documentary evidence pertaining to the ground of denial, 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 she 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 January 23, 2003, must be dismissed.

Following the service center director's decision dated July 1, 2003, the applicant filed an appeal that was received by the Texas Service Center on August 15, 2003. It is noted that the applicant's initial attempt to file this appeal was rejected on August 1, 2003, because the appropriate fee was not attached.

In the August 15, 2003 appeal, the applicant reiterates that she has lived in the United States since 1997. She asks that her case be reviewed again and that she be given "one more chance." In support of this appeal, the applicant submits the August 4, 2003, CIS receipt notice rejecting her attempt to file the appeal earlier, due to lack of fee. The applicant also filed a subsequent appeal that was received on August 25, 2003, in which she reiterates her same statement and submits receipt notices from CIS and a copy of her employment authorization card under Category C19, valid from October 24, 2002 through July 5, 2003.

However, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that an appeal must be properly filed within thirty days after service of the decision. 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).

In this case, the appeal to the service center director's decision of July 1, 2003, coupled with three days for mailing, should have been filed on or before August 4, 2003. The appeal, however, was not properly received at the Texas Service Center until August 15, 2003.

It is noted that the evidence submitted on appeal would not have overcome the finding of the directors. The applicant has not offered any evidence that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2) and (g). It is further noted that the applicant appears to be attempting to prolong the appeal process indefinitely and outside of any remedies remaining available to her.

Based upon the applicant's failure to file a timely appeal, the appeals 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. Here, the applicant has not met that burden

ORDER: The appeals are rejected. The previous denial by the AAO director is affirmed.