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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

MI

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date: MAR 10 2005

[SRC 02 207 55651]

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 N. Gomez

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center on November 7, 2002. The applicant filed a motion to reopen that was dismissed by the service center director on October 20, 2003. On January 20, 2004, the applicant subsequently filed an appeal to the service center director's decision of October 20, 2003. The appeal is now before the Administrative Appeals Office (AAO). The appeal will be rejected.

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 after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The record reveals that the applicant filed his initial TPS application on June 21, 2002. On July 9, 2002, and again on August 7, 2002, 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 continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and denied the application on November 7, 2002.

The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days. On September 3, 2003, ten months after issuance of the denial decision, the applicant responded to the director's decision. The applicant asked that his case be re-opened, and stated that he had been living in the United States "since 1998" and had proof of his residence. The applicant did not submit any further evidence with the motion to reopen.

The service center director's decision dated October 20, 2003, stated that the applicant had failed to submit evidence of his eligibility for late registration, and noted that the evidence of record reflected that the applicant had not entered the United States until December 2, 1999 (based upon the applicant's apprehension by the United States Border Patrol on December 2, 1999). Therefore, the director denied the motion to reopen and concluded that the applicant had again failed to establish eligibility for TPS.

Following the service center director's decision dated October 20, 2003, the applicant filed an appeal that was received by the Texas Service Center on January 20, 2004. On appeal, the applicant now states that he has been living in the United States "since 1995," and has evidence to prove his residence here. In support of the appeal, the applicant submits generic school certificates and awards all dated in 1999.

The regulation at 8 C.F.R. § 103.5(a)(6) provides that:

Appeal to AAU from Service decision made as a result of a motion. A field office decision made as a result of a motion may be [appealed] to the AAU only if the original decision was appealable to the AAU.

In this instance, as the director's original decision was based on abandonment, the AAO has no jurisdiction over this case. Because the original decision was not appealable to the AAO, the appeal on the motion is also not appealable to the AAO, and must be rejected.

In addition, 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 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).

In this case, the appeal to the service center director's decision of October 20, 2003, coupled with three days for mailing, should have been filed on or before November 24, 2003. The appeal, however, was not received at the Texas Service Center until January 20, 2004.

It is noted that the evidence submitted on appeal would not have overcome the finding of the director. The applicant has not offered any evidence that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2) and (g). In addition, the applicant also failed to establish his continuous residence and continuous physical presence in the United States during the requisite periods. He has, therefore, also failed to establish that he met the requirements under 8 C.F.R. § 244.2(b) and (c). 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 him.

It is also noted that the record contains a Warrant of Removal/Deportation dated October 26, 2001, issued by the District Director, San Antonio, Texas, based upon a final order of removal dated September 5, 2001, by the Immigration Judge, San Antonio, Texas.

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 appeal is rejected.