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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: Texas Service Center

Date:

MAY 04 2008

[SRC 02 186 53013]

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion to reopen will be dismissed.

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 because the applicant failed to establish he was eligible for TPS late registration.

The appeal from the director's decision was dismissed on February 28, 2003, after the Director of the AAO also concluded that the applicant had failed to establish his eligibility for TPS. On motion to reopen, the applicant reasserts his claim of eligibility for TPS.

A motion to reopen or reconsider must be filed within thirty days of the underlying decision, except that failure to file during this period may be excused at the Service's discretion when the applicant has demonstrated that the delay was reasonable and beyond the control of the applicant. 8 C.F.R. § 103.5(a)(1)(i).

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 previous decision from the AAO, dated February 28, 2003, clearly advised the applicant that any motion to reopen must be filed within thirty days. Coupled with three days for mailing, the motion, in this case, should have been filed on or before April 2, 2003. The applicant sent his motion to the TSC; however, it was rejected by the TSC on May 5, 2003, because the applicant failed to provide instructions regarding his case. The applicant subsequently resubmitted his motion to reopen on a Form I-290B, Notice of Appeal to the Administrative Appeals Unit, which was properly received by the TSC on May 20, 2003.

It is also noted that the applicant was apprehended by the United States Border Patrol on July 12, 1999, near Brownsville, Texas, and placed in removal proceedings under another record.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the motion to reopen was not filed within the allotted time period. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO dated February 28, 2003, is affirmed.