



U.S. Citizenship
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FILE: [REDACTED]
[SRC 02 182 53731]

Office: TEXAS SERVICE CENTER Date: NOV 23 2005

IN RE: Applicant:



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. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The applicant filed a motion to reopen that was dismissed by the AAO. The matter is again now before the AAO on a second motion to reopen. The previous decisions of the AAO will be affirmed and 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 on July 16, 2002, because the applicant failed to establish he was eligible for late initial registration.

The appeal from the director's decision was dismissed on November 18, 2002, after the Director of the AAO also concluded that the applicant had failed to establish his eligibility for TPS.

The applicant filed a motion to reopen the decision of the AAO director. That motion was dismissed on August 31, 2004, after the Director of the AAO determined that the motion had been untimely filed and that the previous decision of the AAO would not be disturbed.

On this second 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 was dated August 31, 2004. Coupled with three days for mailing, the motion, in this case, should have been filed on or before October 4, 2004. The motion to reopen was, however, was not properly received at the Texas Service Center until October 7, 2004. Therefore, the motion to reopen was not filed within the allotted time period.

Further, 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).

A motion to reconsider must state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy ... [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

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

The applicant's motion to reopen does not address the applicant's eligibility for late registration. As such, the issue on which the underlying decisions were based has not been overcome on motion.

In addition, it is noted that much of the documentation submitted as evidence of the applicant's claim of residence since December 30, 1998, and physical presence since January 5, 1999, in the United States, appears to have been altered. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

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. Accordingly, the motion to reopen will be dismissed and the previous decisions of the AAO will be affirmed.

ORDER: The motion to reopen is dismissed. The previous decisions of the AAO director dated August 31, 2004, and November 18, 2002, are affirmed.