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

[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 06 2006
[WAC 05 095 72386]

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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. 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 because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant asserts that he has been living in the United States since 1998. In support of the appeal, the applicant submits photocopies of additional evidence relating to his claim of residence in the United States dated between 2002 and 2005.

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).

The director's decision of denial, dated July 1, 2005, 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 August 3, 2005. The appeal, however, was not received at the California Service Center until August 4, 2005.

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

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration.

The record reveals that on March 12, 2002, the applicant had filed an earlier TPS application under Citizenship and Immigration (CIS) receipt number SRC 02 124 54683. The Texas Service Center Director denied that application on November 19, 2002, because the applicant failed to establish his eligibility for late initial registration. The record reflects that the decision was mailed to an incorrect address and that the applicant did not file an appeal to the denial of his initial TPS application.

The initial registration period for Hondurans was from January 5, 1999 to August 20, 1999. The record reveals that the applicant filed the current application with CIS on January 3, 2005. The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under the provision of 8 C.F.R. § 244.2(f)(2) and/or (g). As noted above, the applicant also failed to establish his eligibility for late initial registration on his prior 2002 TPS application.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS. 8 C.F.R. § 244.17.

It is also noted that the applicant has also failed to submit sufficient evidence to establish 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 applicant's Honduran national identity document indicated that it was issued to him in Honduras on December 13, 2000, and precludes a favorable finding as to his continuous residence and continuous physical presence during the requisite periods. In addition, some of the submitted documentation dated in 1998 appears to have been altered.

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.