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U.S. Citizenship
and Immigration
Services

M1

FILE:



Office: TEXAS SERVICE CENTER

Date: **MAY 15 2006**

[SRC 02 109 57033]

[SRC 03 236 52265, *Second Motion*]

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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. A subsequent appeal was rejected by the Director (now Chief), Administrative Appeals Office. The applicant filed an untimely motion to reopen on May 1, 2003, that is being dismissed by the Administrative Appeals Office (AAO) under separate cover. While the earlier motion to reopen was pending, the applicant also filed this motion to reopen. The matter is now before the AAO. 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 his eligibility for late initial registration.

The appeal from the director's decision was rejected on February 27, 2003, after the Director of the AAO determined that the appeal was untimely filed, and also concluded that the applicant had failed to establish his eligibility for TPS. The earlier motion to reopen filed on May 2, 2003, was dismissed because it was untimely filed.

On this motion to reopen, the applicant reasserts his claim of eligibility for TPS. He again states that he would like the opportunity to be legal in the United States and pay his taxes. In support of the motion, the applicant submits: the Citizenship and Immigration Services (CIS) receipt notices for his February 16, 2002, initial TPS application; his July 1, 2002 employment authorization application; and, a CIS form letter indicating that his initial application had been denied.

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 Director was dated February 27, 2003, and 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 1, 2003. This motion to reopen, however, was not received until August 28, 2003.

Therefore, 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.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO dated February 27, 2003, is affirmed.