



U.S. Citizenship
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FILE: [REDACTED]
[SRC 03 260 53398]

OFFICE: TEXAS SERVICE CENTER

Date: MAY 30 2006

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 California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center (TSC). A subsequent appeal was then dismissed by the Director (now Chief), Administrative Appeals Office (AAO). The applicant filed a motion to reopen the denial decision that was dismissed by the TSC Director. The matter is now again before the AAO on a motion to reopen. The previous decision 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 TSC Director denied the application because the applicant failed to establish she was eligible for late registration.

A subsequent appeal from the director's decision was dismissed on January 24, 2005, after the Director (now Chief) of the AAO also concluded that the applicant had failed to establish that she was eligible for TPS. The AAO Director determined that the applicant had failed to establish her eligibility for late registration. The AAO Director also determined that the applicant had failed to submit sufficient evidence to establish her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999. The applicant filed a motion to reopen the decision of the AAO Director. The TSC Director indicated that the motion to reopen had been received on March 2, 2005, and determined that the motion was untimely filed. The TSC Director also determined that the motion did not address the applicant's eligibility for late initial registration, did not meet the requirements of a motion to reopen, and, therefore, was dismissed on March 3, 2005. It is noted that, in fact, the motion was date-stamped on February 24, 2005, and was timely received as a motion to reopen the decision of the AAO Director. The AAO Director concurs that the February 24, 2005, motion did not address the applicant's eligibility for late registration and, therefore, was properly dismissed.

On motion to reopen, the applicant asserts that she has been living in the United States since 1998, and would like the opportunity to be legal in this country. The applicant does not submit any additional evidence in support of the motion.

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 denial decision was dated March 3, 2005. Any motion to reopen must have been filed within thirty days after service of the decision. 8 C.F.R. § 103.5(a)(1)(i). Coupled with three days for mailing, the motion, in this case, should have been filed on or before April 5, 2005. The motion to reopen, however, was not properly received until April 11, 2005. 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.

It is noted that the motion does not address applicant's eligibility for late registration. As such, the issue on which the underlying decisions were based has not been overcome on motion.

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 January 24, 2005, is affirmed.