U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: Texas Service Center Date: SEP 0 1 2006
[SRC 02 230 54895]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. A subsequent appeal was dismissed by the Director (now Chief), 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 claims to be 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 June 24, 2005, after the Director of the AAO also concluded that the applicant had failed to establish his eligibility for TPS late registration. The AAO director also concluded that the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States. On August 12, 2005, the applicant filed the instant motion to reopen and 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).

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 July 27, 2005. The motion was received at the Texas Service Center on August 12, 2005.

It is also noted that the applicant was apprehended by the United States Border Patrol on June 21, 2001, near Laredo, Texas, and ordered removed by an immigration judge *in absentia* on November 19, 2001.

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 June 24, 2005, is affirmed.