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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

MI

[REDACTED]

FILE:

[REDACTED]

OFFICE: TEXAS SERVICE CENTER

DATE: APR 06 2007

[REDACTED] consolidated herein]

[SRC 03 182 54787]

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.

Cindy N. Gomez for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. A subsequent appeal and motion to reopen were both dismissed by the Director, Administrative Appeals Office (AAO). The matter is now before the AAO on a second motion to reopen. The motion to reopen will be dismissed.

The applicant is a 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 that he was eligible for late registration.

The appeal from the director's decision was dismissed on March 15, 2005, after the Director of the AAO also concluded that the applicant had failed to establish his eligibility for late registration. The Director, AAO, also found that the applicant had failed to submit sufficient evidence of his continuous physical presence and continuous residence. The applicant's first motion to reopen was dismissed by the AAO on April 3, 2006, because the applicant had failed to demonstrate on motion his eligibility for late registration. 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 April 3, 2006. 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 May 6, 2006. The motion to reopen was received on August 17, 2006.

It is noted that the applicant has not submitted any evidence to establish his eligibility for late registration as described in 8 C.F.R. § 244.2(f)(2). The applicant claims that he has been in the United States since December of 1997, and left briefly to visit his father in Honduras. Contrary to the applicant's assertion, the Record of Deportable/Inadmissible Alien contained in the record of proceeding shows that the applicant was apprehended by United States Border Patrol on January 20, 2001, after entering the country by wading the Rio Grande River at or near Armstrong, Texas. Although the applicant claims that he left the United States to return to Honduras to visit his father, he has failed to submit evidence to establish that he had permission to leave the United States (I-512 Advance Parole status).

It is also noted that the applicant has failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States since December 30, 1998, and January 5, 1999, respectively.

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 decisions to deny the TPS application on appeal and on motion to reopen, are affirmed.