



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER DATE: JAN 10 2007

[WAC 01 262 64047]

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, California Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. 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 on February 25 2003, because the applicant failed to establish her eligibility for late initial registration.

The appeal from the director's decision was dismissed on April 23, 2004, after the Director (now Chief) of the AAO also concluded that the applicant had failed to establish her eligibility for TPS. On motion to reopen, the applicant requests that her TPS application be re-considered.

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 23, 2004. 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 26, 2004. The applicant's motion to reopen was received on August 20, 2004.

It is noted that the applicant's prior application for asylum was withdrawn and her application for suspension of deportation was denied on December 2, 1996, in a removal hearing before an Immigration Judge in Los Angeles, California. The judge granted the applicant the privilege of voluntary departure from the United States on or before April 1, 1997, with an alternate order of removal of the applicant failed to comply with the grant of voluntary departure. On November 25, 1996, the applicant filed an appeal from the Immigration Judge's order with the Board of Immigration Appeals (BIA). On June 29, 1999, the BIA administratively closed the applicant's removal proceeding to allow her to apply for TPS. The applicant did not file her TPS application until August 3, 2001, more than 60 days after the termination of her removal proceeding. Therefore, the applicant cannot qualify for late initial registration on the basis of her removal proceeding. The applicant has not established her eligibility for late initial registration under 8 C.F.R. § 244.2(f)(2).

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 April 23, 2004, is affirmed.