



U.S. Citizenship
and Immigration
Services

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FILE:



Office: TEXAS SERVICE CENTER

Date: MAR 06 2007

[SRC 05 199 51057, motion]
[SRC 04 0886 54779]

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.

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, 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 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 record reveals that the applicant filed his initial TPS application on February 3, 2004, under Citizenship and Immigration Services (CIS) CIS receipt number SRC 04 086 54779. The Director, Texas Service Center, denied that application on March 29, 2004, because the applicant failed to establish that his continuous residence and continuous physical presence in the United States during the qualifying period and his eligibility to file for late initial registration. The director also determined that the applicant failed to provide photo identification and proof of nationality.

The appeal from the director's decision was dismissed on May 24, 2005, after the Director of the AAO also concluded that the applicant had failed to establish his eligibility for TPS. On motion to reopen, the applicant reasserted 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, dated May 24, 2005, 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 at the Service Center on or before June 26, 2005. Furthermore, the instructions to the Form I-290B, Notice of Appeal, very clearly dictate that any appeal or motion is not to be sent directly to the AAO; but, rather, to the "office which made the unfavorable decision." The applicant, nevertheless, sent his motion to the AAO. The motion to reopen was received at AAO on June 21, 2005 and returned to the applicant that day. The motion is not considered properly received until it is received by the Service Center that rendered the unfavorable decision. The appeal was properly received at the Texas Service Center on July 8, 2005.

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 May 24, 2005, is affirmed.