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U.S. Citizenship
and Immigration
Services

[REDACTED]

M1

FILE:

[REDACTED]

OFFICE: TEXAS SERVICE CENTER

DATE: MAR 29 2007

[SRC 04 085 55095]

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. The applicant filed an appeal from the denial decision. That appeal was dismissed by the Director of the Administrative Appeals Office (AAO) under separate cover. While the initial appeal was pending, the applicant filed a second Form I-290B, Notice of Appeal, which is now before the AAO. This appeal will be rejected.

The applicant is a native and citizen of Honduras who is applying for 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. A subsequent appeal was dismissed by the Chief of the AAO who determined that the applicant had failed to establish his: eligibility for late initial registration; continuous residence in the United States since December 30, 1998; and, continuous physical presence in the United States since January 5, 1999.

While the initial appeal was pending, on January 13, 2005, the applicant filed this second appeal.

An appeal that is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee accepted will not be refunded. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

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 director's decision of denial, dated April 12, 2004, clearly advised the applicant that any appeal must be properly filed within thirty days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). Coupled with three days for mailing, the appeal, in this case, should have been filed on or before May 17, 2004. This appeal, however, was not received at the Texas Service Center until January 13, 2005.

Review of the record of proceedings under the applicant's other [REDACTED] reflects that a Warrant of Removal/Deportation was issued at Harlingen, Texas, on February 8, 2002, following a final order of removal *in absentia* issued on January 18, 2002, by the Immigration Judge, Harlingen, Texas.

Based upon the applicant's failure to file a timely appeal, this appeal will be rejected.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The appeal is rejected.