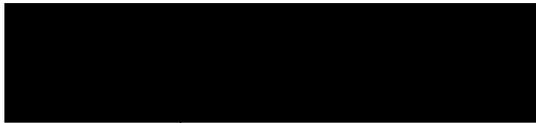




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy



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FILE:



Office: TEXAS SERVICE CENTER Date: NOV 07 2007

[SRC 02 193 54016]

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 applicant filed an untimely motion to reopen that was dismissed by the director of the AAO. The matter is again before the AAO on a motion to reopen. The previous decisions of the AAO will be affirmed and this 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 TPS application on July 16, 2002, because the applicant failed to establish that he was eligible for late initial registration. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS) on June 3, 2002.

A subsequent appeal from the director's decision was dismissed on September 30, 2002, after the Director of the AAO also concluded that the applicant had failed to establish that he was eligible for late registration.

The applicant filed a motion to reopen the AAO Director's decision, in which he stated that he had been living in the United States since 1995, and would like the opportunity to live legally in this country.

On November 2, 2004, the Director of the AAO dismissed the initial motion after determining that it was untimely filed and that the applicant had not established his eligibility for TPS.

On the current motion to reopen the AAO Director's decision, the applicant reasserts his claim of eligibility for TPS, and submits evidence in an attempt to support his claim.

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 November 2, 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 December 6, 2004. The motion to reopen was received on December 7, 2004. The motion to reopen was not filed within the allotted time period. Accordingly, the motion to reopen will be dismissed and the previous decisions of the AAO will not be disturbed.

It is noted that although the applicant's motion to reopen contains evidence of the applicant's presence in the United States, the applicant failed to address the primary basis for the denial of the application and the appeal which was the applicant's failure to file his Form I-821, Application for Temporary Protected Status, within the

initial registration period, or to establish his eligibility for late registration. The applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO.

It is noted that the Federal Bureau of Investigation (FBI) fingerprint results reflects that the applicant has another record of proceeding under A-file [REDACTED]. Review of this other A-file record reflects that the applicant was previously deported from the United States to Honduras on September 6, 1991, following the final order of removal issued by the Immigration Judge, Phoenix, Arizona, on August 26, 1991.

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 of the AAO dated September 30, 2002, and November 2, 2004, are affirmed.