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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: APR 26 2004

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 M. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant is a native and citizen of Honduras who indicated on his application that he entered the United States on September 20, 1998, without a lawful admission or parole. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish he was eligible for late registration.

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

If an untimely appeal meets the requirements of a motion to reopen as described in section 103.5(a)(2) of this part or a motion to reconsider as described in section 103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case. 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

A motion to reconsider must state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy ... [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

On appeal, the applicant simply reasserted his claim of eligibility for TPS. The applicant does not specify any "new facts to be provided", nor is the appeal "supported by affidavits or other documentary evidence" as is required of motions to reopen in 8 C.F.R. § 103.5(a)(2). The applicant does not establish that the decision was incorrect or support the appeal with any pertinent precedent decisions as is required of motions to reconsider in 8 C.F.R. § 103.5(a)(3). Therefore, this untimely appeal will not be considered a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

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 decision, dated October 28, 2002, clearly advised the applicant that any appeal must be filed within thirty days. Coupled with three days for mailing, the appeal, in this case, should have been filed on or before November 30, 2002. The Form I-290B, Notice of Appeal, is very clear in indicating that the appeal is <u>not</u> to be sent directly to the Administrative Appeals Office; but, rather, to the "office which made the unfavorable decision." The applicant, nevertheless, sent his appeal to the Administrative Appeals Office. The appeal 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 respective Service Center on January 27, 2003. Based upon the applicant's failure to file a timely appeal, the appeal will be rejected.

ORDER: The appeal is rejected.