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U.S. Citizenship
and Immigration
Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAY 11 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:

[redacted]

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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

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 for TPS because the applicant failed to establish he was eligible for late registration.

An appeal that is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee Citizenship and Immigration Services (CIS) 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).

A motion to reopen must state the new facts to be provided at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.3(a)(2)(v)(B)(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 CIS 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, counsel for the applicant explained that the applicant had responded to two requests to furnish evidence in support of his application. Counsel provides copies of evidence the applicant submitted on March 8, 2002, and March 11, 2002. However, this evidence pertains to the applicant's residence in the United States and was considered by the director prior to the issuance of the denial notice on June 20, 2002. The applicant did not furnish any evidence to establish that he was eligible for late registration. 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 director's decision to deny, dated June 20, 2002, clearly advised the applicant that any appeal must be filed within thirty days of the service of the decision. Coupled with three days for mailing, the appeal, in this case, should have been filed on or before July 23, 2002. The properly signed appeal was received at the Vermont Service Center on August 23, 2002.

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

ORDER: The appeal is rejected.