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: OCT 22 2004

IN RE: Applicant: [redacted]
a.k.a. [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 N. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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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 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 initial application filed on July 15, 2003, after determining that the applicant had failed to establish that 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 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 September 24, 2003, 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 October 27, 2003. The appeal was received at the Texas Service Center on October 29, 2003.

It is noted that on the Form I-821, Application for Temporary Protected Status, the applicant indicated his date of entry into the United States as October 24, 1998, and indicated that he has never been under immigration proceedings. The record, however, contains a Federal Bureau of Investigation (FBI) report pertaining to the applicant's fingerprints. This report reflects that the United States Border Patrol, Del Rio, Texas, apprehended the applicant on October 5, 1999, and placed him in removal proceedings under the name [redacted] with date of birth given as January 3, 1983. The applicant provided his date of birth on the Form I-821, as January 3, 1981. The applicant's date of entry into the United States in October 1999 would indicate that the applicant has not established that he maintained continuous residence and continuous physical presence in the United States during the requisite periods. The director did not address this issue in the decision. In addition, the submitted evidence of record includes only a photocopy of a handwritten Honduran birth certificate with translation, and a single pay stub dated "1/8/99" that does not provide specific information about the company or the applicant, and which appears to have been altered.

It is also noted that the director issued a second Notice of Decision also dated September 24, 2003, in which the director refers to this same July 15, 2003, initial TPS application as a "re-registration." The evidence of record and the records of Citizenship and Immigration Services (CIS), however, do not reflect any earlier TPS applications under this applicant's name and date of birth. Therefore, the director's reference to the initial July 15, 2003, application as a "re-registration" is withdrawn.

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