



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY



MI

FILE: [Redacted]

Office: Texas Service Center Date: FEB 02 2005

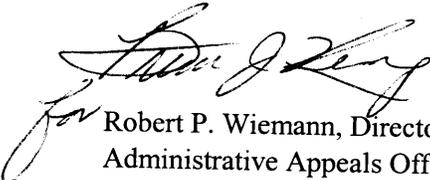
IN RE: Applicant: [Redacted]

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.

  
for Robert P. Wiemann, Director  
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. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The 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 application because the applicant failed to submit evidence to establish that he was eligible for late initial filing.

The appeal from the director's decision was dismissed on April 16, 2003, after the Director of the AAO also concluded that the applicant had failed to establish his eligibility for TPS.

On motion to reopen, the applicant states that he has been in the United States since 1998 and requests the opportunity to become legal in the United States in order to obtain employment and pay his taxes.

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, dated April 16, 2003, clearly advised the applicant that any motion to reopen must be filed within thirty days. Coupled with three days for mailing, the motion, in this case, should have been filed on or before May 19, 2003. The motion to reopen was received on July 14, 2003.

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 decision of the AAO dated April 16, 2003, is affirmed.