



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[LIN 02 252 50201]

Office: Nebraska Service Center

Date: **JAN 05 2006**

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The instant application was denied by the Director, Nebraska Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The matter is now before the 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 instant application on February 19, 2003, after determining that the applicant had failed to establish his eligibility for late registration. The applicant also failed to establish his "residence in the United States to December 30, 1998, and his physical presence since January 5, 1999".

The appeal from the director's decision was dismissed on October 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 reasserted his claim of eligibility for TPS.

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 October 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 November 18, 2003. The motion to reopen was received on May 13, 2004.

Although not addressed by the director, the record of proceedings contains the Federal Bureau of Investigation report reflecting that the applicant was arrested by the Waukegan Police Department on August 27, 2001, and charged with the offense of "Soliciting For A Prostitute." CIS must address this arrest and/or conviction(s) in any future decisions or proceedings.

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 October 16, 2003, is affirmed.