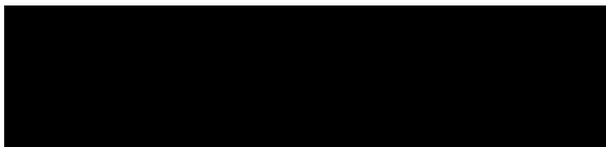


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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: MAR 27 2006
[SRC 03 040 55377]
[MSC 05 103 15520, Appeal]

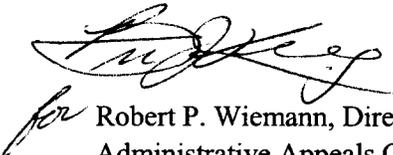
IN RE: Applicant: [REDACTED]

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 initially denied by the Director, Texas Service Center, for cause. The applicant filed an appeal that was treated by the service center director as a motion to reopen. The service center director reopened the matter and subsequently denied the application again for cause. The case 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 initially denied the application on August 30, 2003, because the applicant failed to establish his eligibility for late initial registration. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on November 12, 2002.

After reopening the matter, and requesting additional evidence, the director denied the application on January 13, 2004, because the applicant failed to establish his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999. The director noted that the record of proceedings indicates that the applicant entered the United States at or near Roma, Texas, on or about November 26, 2000.

On appeal, the applicant in one statement asserts that he has been in the United States since "10/20/1998." In a second statement, he indicates that he entered the United States on December 20, 1998, but was not detained by immigration officers until "01/2001," while he was near the Mexican border at the time of his apprehension, but had already been residing in the United States. In support of the appeal, the applicant submits photocopies of: his fingerprinting worksheet dated January 27, 2003; CIS receipt notices for his November 2002 application for TPS, his November 2002 and July 2003 applications for employment authorization, and his September 2003 appeal that was treated as a motion to reopen by the service center director; a Drug and Alcohol Traffic Education Course, Certificate of Completion dated "10/07/1999;" a money transfer receipt dated "12/12/98;" three Notices of Hearing in Removal Proceedings dated November 30, 2000, December 14, 2000, and January 26, 2001; and, a notice regarding rights of appeal before the Executive Office of Immigration Review (EOIR).

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 January 13, 2004, 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 February 16, 2004. The appeal, however, was not received at the Texas Service Center until January 11, 2005.

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

It is noted that the Drug and Alcohol Traffic Education Course, Certificate of Completion dated "10/07/1999," and the money transfer receipt dated "12/12/98" each appear to have been altered.

It is also noted that the record contains a Warrant of Removal/Deportation, issued at Harlingen, Texas, on February 11, 2002, following the *in absentia* final order of removal issued on February 5, 2002, by the Immigration Judge, Harlingen, Texas. The applicant had been placed in removal proceedings following his apprehension by the United States Border Patrol on November 27, 2000. According to the applicant's statements taken at that time, he claimed to have entered the United States on or about November 26, 2000, at or near Roma, Texas, and did not make a claim of having previously resided in the United States.

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.