



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[SRC 04 001 54681]

Office: Texas Service Center

Date: JUN 27 2007

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.

Robert P. Wiemann, Chief
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 establish that he was eligible for late registration. The director also denied the application because the applicant failed to establish his continuous physical presence in the United States since January 5, 1999, to the date of filing his application. In addition, the director denied the application because the applicant had failed to provide a copy of his birth certificate along with an English translation and a copy of a photo identification or national identity document from his country of origin.

On April 27, 2004, the applicant filed an appeal which was dismissed by the Director, now Chief, of the AAO, on May 4, 2005.

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 May 4, 2005, 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 June 7, 2005. The motion is not to be sent directly to the AAO; but, rather, to the "Service Center Director who issued the denial." The applicant, nevertheless, sent his motion to the AAO. The motion is not considered properly received until it is received by the Service Center that rendered the unfavorable decision. The motion was received at the Texas Service Center on June 22, 2005.

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 May 4, 2005, is affirmed.