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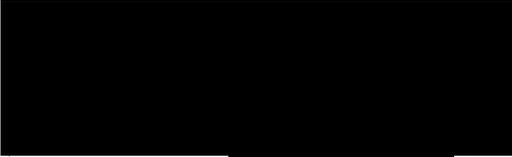
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

[SRC 03 205 55436]

Office: TEXAS SERVICE CENTER

Date: APR 11 2005

IN RE:

Applicant:



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, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The applicant, a 17 year-old minor, is a native and citizen of Honduras who is applying for 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 had: 1) continuously resided in the United States since December 30, 1998; and 2) been continuously physically present in the United States since January 5, 1999.

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 December 29, 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 February 2, 2004. However, the appeal was not received at the Texas Service Center until February 13, 2004.

It is noted that the statement submitted on appeal would not have overcome the finding of the director. While regulations may allow minor children of aliens who are TPS-eligible to file their applications based on their parent's eligibility, these regulations do not relax the applicant's requirements for eligibility for TPS. The applicant must still meet the continuous residence and continuous physical presence requirements pursuant to section 244(c) of the Act. Persons applying for TPS offered to Hondurans must demonstrate continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. The applicant, in this case, did not enter the United States until May 22, 2002. Therefore, he could not have met the criteria described in 8 C.F.R. § 244.2(b) and (c).

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

It is noted that the record includes a Notice to Appear, issued at Eagle Pass, Texas, on May 22, 2002, following the applicant's apprehension by the United States Border Patrol while attempting entry into the United States at or near Eagle Pass, Texas, on or about May 22, 2002. A change of venue from Texas, to Miami, Florida, was granted. The applicant was subsequently ordered removed to Honduras, in absentia, by Order of the Immigration Judge, Miami, Florida, dated June 12, 2003.

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.