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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

[SRC 03 083 53343]

Office: TEXAS SERVICE CENTER

Date: APR 11 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.

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 (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.

It is noted that the applicant had filed an initial application for TPS on August 18, 1999, [SRC 99 250 50321] during the initial registration period. That application was denied on November 18, 2000, due to abandonment based upon the applicant's failure to respond to a request for evidence to establish her eligibility for TPS (issued on April 4, 2000). Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

Because the applicant's initial TPS application was denied on November 18, 2000, any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits. If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant subsequently filed this TPS application on February 14, 2003.

The director denied this application because the applicant failed to establish that she is eligible for late initial registration.

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 her, 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 November 4, 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 should have been filed on or before December 8, 2003. The appeal, however, was not properly received at the Texas Service Center until December 11, 2003.

It is noted that the evidence submitted on appeal would not have overcome the finding of the director. On appeal, the applicant states that she has sent proof that she was in the United States before December 1998. In support of the appeal, the applicant resubmits documentation that had previously been entered into the record, relating to her continuous residence and continuous physical presence in the United States. On appeal, the applicant has not submitted any evidence that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2) and (g).

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

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.