



U.S. Citizenship
and Immigration
Services

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

ML

[Redacted]

FILE: [Redacted]

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Applicant: [Redacted]

JAN 26 2005

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[Redacted]

PUBLIC COPY

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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 indicated on his application that he entered the United States without a lawful admission or parole.

The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish 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 the Service has accepted will not be refunded. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

On appeal, the applicant states that he did submit credible evidence that he continuously resided in the United States.

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 decision, dated February 3, 2003, clearly advised the applicant that any appeal must be filed within thirty days. Coupled with three days for mailing, the appeal, in this case, should have been filed on or before March 6, 2003. The appeal was received at the respective Service Center on March 19, 2003. Based upon the applicant's failure to file a timely appeal, the appeal will be rejected.

It is noted that the applicant did not enter the United States until April 2000, and is therefore ineligible for the benefits of the TPS program. It is also noted that the applicant had been ordered removed from the United States by an Immigration Judge on April 30, 2001. His appeal to the Board of Immigration Appeals was the subsequently administratively closed on July 2, 2002, to allow the applicant to apply for TPS.

An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is rejected.