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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:

[SRC 99 248 52170]

Office: TEXAS SERVICE CENTER

Date: JUN 27 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:

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.

The director denied the application because she found that the applicant had failed to submit requested court documentation relating to all charges on her criminal record.

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 February 4, 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 March 8, 2004. The appeal, however, was not received at the Texas Service Center until March 9, 2004.

It is noted that the evidence submitted on appeal would not have overcome the finding of the director. Although on the Form I-821, Application for Temporary Protected Status, the applicant certified under penalty of perjury that she had never been arrested or convicted, the record reveals the following offenses:

- 1) On October 24, 1995, the applicant, using the name [REDACTED] was arrested by the Sheriff's Office, Gainesville, Georgia, and charged with one count of Prostitution.
- 2) On July 26, 1996, the applicant was arrested by the Pompano Beach [Florida] Police Department, and charged with Prostitution, Statute/Ordinance [REDACTED] Misdemeanor. The supplemental arrest data indicates Broward County Court, Level-Misdemeanor, 2<sup>nd</sup> Degree, Procure for Prostitute-Prostitution Lewd Act Assignatn [sic], and a plea of Nolo Contendre and disposition date of September 30, 1996.

In response to the request for additional evidence and again on appeal, the applicant submitted a Form I-601, Application for Waiver of Ground of Excludability, and the final court disposition documents for the offense listed above at Number 1. These documents reflect that the applicant plead nolo contendere on one count of prostitution and was sentenced to a fine and 12 months in the Hall County Correctional Institute, suspended sentence. The Amended Sentence, Case No. [REDACTED] indicated that the fine and twelve months probation may be suspended upon INS deportation from Hall County, Georgia, with all other terms and conditions of the original sentence remaining in full force.

On appeal, the applicant stated that she would be submitting the required final court dispositions for the offense(s) listed above at Number 2, within 30 days from the date of the appeal. To date, however, no additional evidence

has been received into the record. The applicant is ineligible for temporary protected status because of her failure to provide information necessary for the adjudication of her application. 8 C.F.R. § 244.9(a).

Although on the yearly Forms I-821, the applicant certified under penalty of perjury that she had never been under immigration proceedings, the record contains evidence relating to the applicant's deportation to Honduras from Houston, Texas, that occurred on December 11, 1995. The applicant's deportation followed the final Order of the Immigration Judge, Atlanta, Georgia, dated November 22, 1995, ordering the applicant's deportation to Honduras. It is noted that in proceedings, in a document entitled "Statements Made For The Issuance Of A Final Order Of Deportation," signed by the applicant [and her counsel at that time], the applicant admitted the factual allegations in the Order to Show Cause and made no application for relief from deportation such as would allow her to remain in the United States.

It is also noted that the applicant had filed a Form I-589, Application for Asylum and Withholding of Deportation, on January 31, 1994. As noted above, the applicant made no application for relief from removal when she appeared before the Immigration Judge in November 1995. According to the continuation page of the Form I-213, Record of Deportable Alien, the applicant is reported to have told immigration officers that she only filed for asylum in order to get a work permit, and paid a man \$300 to help her file the forms in order to get the employment authorization documents. The record contains the applicant's asylum interview notice scheduled for December 23, 1998, and a decision from the Miami Asylum Office dated January 7, 1999, terminating the asylum application due to abandonment based upon the applicant's failure to appear for her scheduled interview.

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.