



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

OFFICE: TEXAS SERVICE CENTER

Date: **MAY 30 2006**

[SRC 03 175 55320]

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 California Service Center. 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 (TSC). A subsequent appeal was then dismissed by the Director (now Chief), Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The previous decision of the AAO will be affirmed and 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 TSC Director denied the application because the applicant failed to establish he was eligible for late registration.

A subsequent appeal from the director's decision was dismissed on February 24, 2005, after the Director of the AAO also concluded that the applicant had failed to establish that he was eligible for TPS. The AAO Director determined that the applicant had failed to establish his eligibility for late registration. The AAO Director also determined that the applicant had failed to submit sufficient evidence to establish his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999.

On motion to reopen, the applicant asserts that he has been living in the United States since 1997, and would like the opportunity to be legal in this country. In support of the motion, the applicant submits: additional bills and receipts in his name dated between 2001 and 2004; and, generic bills and receipts dated in 1998 and 1999.

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 was dated February 24, 2005. Any motion to reopen must have been filed within thirty days after service of the decision. 8 C.F.R. § 103.5(a)(1)(i). Coupled with three days for mailing, the motion, in this case, should have been filed on or before March 29, 2005. The motion to reopen, however, was not properly received until April 8, 2005. 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.

It is noted that the motion does not address the applicant's eligibility for late registration. As such, the issue on which the underlying decisions were based has not been overcome on motion.

In addition, the Federal Bureau of Investigation (FBI) fingerprint results report indicates that the applicant was apprehended by the United States Border Patrol while attempting entry into the United States at or near Brownsville, Texas, on or about August 16, 1999. The applicant's request for change of venue for his

immigration hearing was not approved due to improper service on opposing counsel. The record contains a Warrant of Removal/Deportation issued on March 28, 2000, at Harlingen, Texas, following the final order of removal to Honduras issued *in absentia* by the Immigration Judge, Harlingen, Texas.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO dated February 24, 2005, is affirmed.