U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: TEXAS SERVICE CENTER Date: SEP 06 2006
[SRC 02 143 53634]
[SRC 03 055 51473, *Motion*]

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.

Cindy M. Gomez for
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. A subsequent appeal was dismissed by the Director (now Chief), Administrative Appeals Office. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion to reopen will be dismissed.

The applicant is a native and citizen of Nicaragua 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 the applicant failed to establish her eligibility for late initial registration.

The appeal from the director's decision was dismissed on October 31, 2002, after the Director of the AAO also concluded that the applicant had failed to establish her eligibility for late registration.

On motion to reopen, the applicant reasserts her claim of eligibility for TPS. She states that she entered the United States in 1998, and that she applied late because she lacked information and funds, and was afraid of being deported. In support of the motion, the applicant submits additional evidence relating to her residence and physical presence in the United States and resubmits some of the materials that had previously been entered into the record. She does not however, submit any evidence relating to her eligibility for late initial registration.

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 Director was dated October 31, 2002, and clearly stated that any motion to reopen must be filed within thirty days. Coupled with three days for mailing, the motion, in this case, should have been filed on or before December 3, 2002. The motion to reopen, however, was not properly received until December 10, 2002.

Therefore, 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 Federal Bureau of Investigation (FBI) fingerprint results report indicates that the applicant was arrested on May 1, 2004, and was charged with "Traffic Offense-Driving Under the Influence, Statute/Ordinance FL316.193. The charge(s) may have bearing on the applicant's eligibility for TPS. The final disposition of the charge(s) against the applicant must be addressed in any future proceedings.

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 October 31, 2002, is affirmed.