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U.S. Citizenship
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FILE: [REDACTED]
[SRC 02 204 56819]

Office: TEXAS SERVICE CENTER

Date: **AUG 24 2007**

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 dismissed by the Director, Administrative Appeals Office (AAO). A motion to reopen the application was dismissed by the AAO. The matter is now before the AAO on a second motion to reopen.

The applicant claims to be a 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 record reveals that the applicant filed a first TPS application on June 18, 2002, with the Texas Service Center (TSC), under receipt number SRC 02 204 56819. The TSC director denied that application on September 16, 2002, because the applicant failed to establish she was eligible for late registration. On September 26, 2002, the applicant filed an appeal from the denial decision. The AAO dismissed the appeal on February 27, 2003.

On April 30, 2004, the applicant filed a first motion to reopen her case. The AAO dismissed the motion on August 29, 2005, because it was not filed timely. The applicant filed the current motion to reopen that decision on October 24, 2005.

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 August 29, 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 October 3, 2005. The motion to reopen was received on October 24, 2005.

It is noted that the record reflects that the applicant was apprehended entering the United States without inspection on January 5, 1999. On May 12, 1999, an Immigration Judge in Phoenix, Arizona, ordered the applicant removed from the United States to Honduras. That order remains outstanding.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since 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.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO dated August 29, 2005, is affirmed.