U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FEB 28 2003

FILE: [redacted] Office: Texas Service Center Date:
SRC 02 184 53953

IN RE: Applicant: [redacted]

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

IN BEHALF OF APPLICANT: Self-represented

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

for 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 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. § 1254a.

The director determined that the applicant failed to submit evidence to establish that he was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. The director, therefore, denied the application.

8 C.F.R. § 103.3(a)(2)(v)(B) states:

> *Untimely appeal--(1) Rejection without refund of filing fee.* An appeal which 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.
>
> *Untimely appeal--(2) Untimely appeal treated as motion.* If an untimely appeal meets the requirements of a motion to reopen as described in section 103.5(a)(2) of this part or a motion to reconsider as described in section 103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

The applicant, on appeal, states he is filing the appeal because the Service requested evidence regarding his eligibility. The applicant further states he will file a separate written brief or statement within 30 days. However, it has been approximately three months since the filing of the appeal and no additional statement or evidence has been provided. The applicant did not address the issue of eligibility for late registration. Thus, the applicant's statement on appeal does not meet the requirements of a motion.

Whenever a person has the right or is required to do some act within a prescribed period after the service of a motion 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 July 18, 2002, 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 August 20, 2002. The appeal was dated by the applicant on July 18, 2002, and received by the Service on November 8, 2002.

Based upon the applicant's failure to file a timely appeal, the appeal will be rejected.

[redacted]

ORDER: The appeal is rejected.