



U.S. Citizenship
and Immigration
Services

100-1

[REDACTED]

FILE: [REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: AUG 03 2004

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.

Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

DISCUSSION: The application was denied by the Director, California 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 El Salvador 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 he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001. The director also denied the application because the applicant had failed to provide evidence of identity and nationality, and because the applicant failed to submit a Form I-601, Application for Waiver of Grounds of Excludability.

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 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 director's decision of denial, dated February 25, 2003, 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 31, 2003. The appeal was received at the California Service Center on May 22, 2003.

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

It appears that the applicant was charged with document fraud and removed from the United States on March 29, 2001. This apparent departure from the United States under an order of removal would constitute a break in the applicant's continuous residence and continuous physical presence in the United States during the requisite periods. A departure from the United States as a result of an order of removal does not qualify as a brief, casual, and innocent absence outside the United States as defined at 8 C.F.R. § 244.1. It is further noted that the applicant failed to report his apparent removal from the United States on his Form I-821, Application for Temporary Protected Status, and may be excludable from the United States for this reason as well. Although the director did not base the denial of the application on these issues, the application also may not be approved for these reasons.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is rejected.