

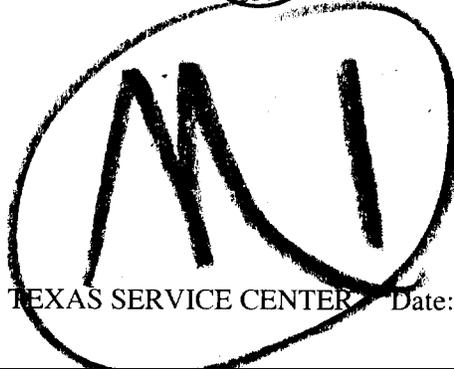
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U.S. Citizenship
and Immigration
Services



DEC 14 2009

FILE: [REDACTED]
[SRC 02 136 54651]

Office: TEXAS SERVICE CENTER Date:

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.

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 (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 submit a certified final court disposition for a charge that appears on the applicant's Federal Bureau of Investigation (FBI) fingerprint results report.

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 November 7, 2002, 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 December 10, 2002. The appeal was received at the Texas Service Center on December 15, 2003, more than one year after issuance of the director's decision.

It is noted that the statement submitted on appeal would not have overcome the finding of the director. The applicant states that he has submitted all the requested evidence and required fees, and does not understand what has happened in his case. The applicant does not submit any additional evidence in support of the appeal. It is further noted that in response to the director's request for a certified final court disposition, the applicant submitted a printout of an Arkansas Traffic Violation report indicating a "Conviction Date" of April 27, 2001, for a traffic violation that occurred on April 15, 2001. The issue that appears on the FBI fingerprint report, however, pertains to a misdemeanor charge of Failure to Appear registered with the Fort Smith, Arkansas, Police Department, on or around October 9, 2001, six months after the traffic violation.

It is also noted that the record reflects that the applicant has not established his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The affidavit of [REDACTED] does not conform to the regulatory provisions at 8 C.F.R. § 244.9(a)(2)(v)(A) through (G). The only other evidence of record consists of the charges dated October 9, 2001, as appear on the FBI fingerprint report, the traffic violation of April 15, 2001, and the applicant's Arkansas Drivers License issued on July 15, 2002.

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

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



ORDER: The appeal is rejected.