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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: 01/07/08

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

DISCUSSION: The application was denied by the Director, California 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 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 had been convicted of possession of marijuana for sale, in violation of Health and Safety Code 11359, a felony offense.

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 July 28, 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 August 30, 2003. The appeal was received at the California Service Center on October 7, 2003.

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

It is noted in the record that the applicant was removed from the United States to El Salvador on May 21, 1997, based on an order by an Immigration Judge on May 7, 1997, for having entered the United States without inspection on or about April 22, 1991, and for having been convicted of a drug offense, rendering the applicant inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act, and deportable pursuant to the former section 241(a)(2)(A)(iii) Act (convicted of an aggravated felony) and section 241(a)(2)(B)(i) of the Act (convicted of a violation relating to a controlled substance), now sections 237(a)(2)(A)(iii) and 237(a)(2)(B)(i), respectively.

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.