



U.S. Citizenship
and Immigration
Services



M

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

JUL 30 2004

IN RE:

Applicant:



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

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*identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy*

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 that she had: 1) continuously resided in the United States since February 13, 2001; and, 2) been continuously physically present in the United States since March 9, 2001. The director also denied the application because the applicant failed to provide sufficient proof of identity and nationality.

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 27, 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 April 1, 2003. The appeal was received at the Vermont Service Center on June 12, 2003.

On appeal, the applicant states that the director's request for additional evidence was mailed to the wrong address. The applicant asserts that she only discovered her application had been denied when she was denied an extension of work authorization because her TPS application had been denied.

The record shows that the director's request for additional evidence was mailed to the applicant's address of record on November 1, 2002. The notice was returned with a United States Postal Service sticker showing the applicant's forwarding address as [REDACTED] The request was remailed to the applicant at that address on December 1, 2002, but again was returned by the United States Postal Service marked "Attempted - Not Known." The notice of denial was sent to the same address, and does not appear to have been returned to Citizenship and Immigration Services (CIS) as undeliverable mail. There is no indication in the record that the applicant reported a change of address to CIS until she filed her appeal on June 12, 2003. As stated above, the appeal was not filed with fee until June 12, 2003, more than two months after the date of issuance of the notice of denial. Therefore, the applicant's explanation for her failure to file a timely appeal cannot be accepted.

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.



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

ORDER: The appeal is rejected.