

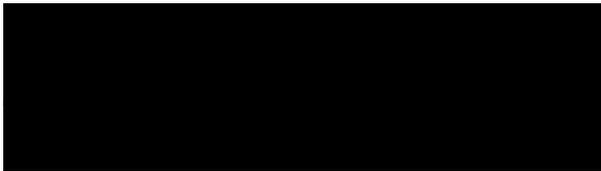
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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
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U.S. Citizenship
and Immigration
Services

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MAR 29 2004

FILE:



Office: VERMONT SERVICE CENTER

Date:

IN RE:

Applicant:



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

ON BEHALF OF PETITIONER:



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, Vermont 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 determined that the applicant was ineligible for TPS because he is inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(II) of the Act, based on his conviction of a drug-related offense. The director, therefore, denied the application.

On appeal, counsel asserts that the narcotics found were not the applicant's, they were not in his possession, and they were found only after a search of the apartment where he rented a room. Counsel further asserts that because of a language barrier, the applicant was unable to present an effective defense, and if appealed, the narcotics case would have been overturned and the applicant found not guilty.

8 C.F.R. § 103.3(a)(2) states, in pertinent part, that the affected party shall file an appeal, with fee, including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.

8 C.F.R. § 103.3(a)(2)(v)(B)(1) states, in part:

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.

Additionally, 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states, in part:

If an untimely appeal meets the requirements of a motion to reopen as described in § 103.5(a)(2) of this part or a motion to reconsider as described in § 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's statement, on appeal, does not meet the requirements of a motion.

8 C.F.R. § 103.5a(b) states, in part, that 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.

The record reflects that the director denied the application on May 30, 2002. The applicant was advised that he may file an appeal, along with the required fee and any supporting brief, within 30 days of the service of the decision. The Form I-290B, Notice of Appeal, is very clear in indicating that the appeal is not to be sent directly to the AAO; but, rather, to the "office which made the unfavorable decision." The applicant, nevertheless, sent his appeal to the AAO. The appeal is not considered properly received until it is received by the Service Center that rendered the unfavorable decision. On September 28, 2002, approximately four months after the director's decision, the appeal was received, with fee, at the Vermont Service Center, the office where the unfavorable decision was made.

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

ORDER: The appeal is rejected.