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



FILE: [Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: NOV 04 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

**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 Honduras 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 had been convicted of a felony committed in the United States. The director, therefore, denied the application.

On appeal, the applicant asserts that he no longer has a felony or a misdemeanor conviction because the case was dismissed by the court since the charges occurred over 12 years ago, and he had complied with everything that the court imposed on him.

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 August 21, 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 September 23, 2003. The appeal was received at the California Service Center on January 27, 2004.

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 furnished a copy of court documents dated October 28, 2003, indicating that, based on the applicant's fulfillment of the conditions of his probation, the applicant's felony conviction on August 15, 1991 of 261.5 PC (unlawful sexual intercourse with a minor) was reduced to a misdemeanor, the plea of guilty or conviction was set aside, a plea of not guilty was entered, and the case was dismissed pursuant to 1203.4 PC. However, the Board of Immigration Appeals, in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), held that under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. The applicant, therefore, remains convicted of the felony offense despite the expungement of the conviction.

**ORDER:** The appeal is rejected.