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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

MI



FILE: [REDACTED]
[EAC 02 198 51987]

Office: VERMONT 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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 claims to be 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 was inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(II) of the Act, due to his drug-related conviction.

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 May 7, 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 June 9, 2003. The appeal was received at the Vermont Service Center on June 11, 2003.

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

It is noted for the record that the applicant, on appeal, has not overcome the director's findings. The applicant was convicted on February 10, 1998, of criminal possession of a controlled substance. The indictment report shows that at the time of the applicant's arrest on March 27, 1997, he was in possession of cocaine (less than 500 milligrams pure substance). Additionally, the Federal Bureau of Investigation fingerprint results report shows that the applicant was arrested on September 8, 1991, in Mineola, New York, for driving while intoxicated. The final court disposition of this arrest is not contained in the record.

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.