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U.S. Citizenship
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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: AUG 12 2005

[WAC 01 229 51403]

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

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 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 denied the application because the applicant had been convicted of two misdemeanors committed in the United States.

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 18, 2004, 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 21, 2004. The appeal was received at the California Service Center on June 22, 2004.

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

It is noted that the applicant has not overcome the director's findings. The Federal Bureau of Investigation (FBI) fingerprint results report indicates the following offenses:

- (1) On June 24, 1990, in Los Angeles, California, the applicant was arrested for assault with a deadly weapon other than firearm or great bodily injury/force. The records of the Municipal Court of Los Angeles, Central Arraignment Judicial, County of Los Angeles, California, shows that on June 26, 1990, under Case [REDACTED] the applicant was convicted of assault with a deadly weapon/instrument, 245(a)(1) PC, a misdemeanor. He was placed on probation for a period of 24 months, under the condition that he serve 45 days in the county jail. The record shows that the applicant violated the terms of his probation on February 5, 1991, and that on February 6, 1991, the court revoked the applicant's probation, and a bench warrant was issued for the applicant's arrest.
- (2) On December 23, 1990, in Los Angeles, California, the applicant was arrested for the misdemeanor offense of theft of personal property. The records of the Municipal Court of Los Angeles, Central Arraignment Judicial, County of Los Angeles, California, under Case [REDACTED] shows that on February 5, 1991, the applicant was indicted for theft of property, 484(a) PC, a misdemeanor. Because the applicant failed to appear for his arraignment on February 6, 1991, a bench warrant was issued for his arrest. The outcome of this case is not contained in the record.
- (3) On October 10, 1992, in Los Angeles, California, the applicant was arrested for the felony offense of "FELON ADDICT POSS FIREARM." The FBI report shows that the applicant was subsequently convicted of carrying a loaded firearm in a public place, 12031(a) PC. However, the actual court disposition of this arrest is not contained in the record although he was requested on March 31, 2004, to submit the final court dispositions of all his arrests.

The applicant, on appeal, asserts that "there is no evidence, record or disposition by the courts" that he was convicted of the offenses detailed in Nos. 2 and 3 above. However, the applicant failed to submit any evidence to establish this assertion. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The applicant has failed to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

It is further noted that the nationality the applicant claimed and/or established at the time he first came into contact with the Department of Homeland Security (DHS) was that of Guatemala. The Record of Deportable Alien, Form I-213, issued on July 13, 1990 in San Ysidro, California, and again issued on October 29, 1992 in Los Angeles, California, both indicate that the applicant claimed to be a national of Guatemala.

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.