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U.S. Citizenship
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FILE:  OFFICE: CALIFORNIA SERVICE CENTER DATE: JUL 01 2005

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, reopened, and denied again 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 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 reopened application because the applicant had been convicted of two felony offenses. Specifically, on May 16, 1995, in the Superior Court of California, County of Los Angeles, the applicant was indicted for Count 1, cruelty to a child, 273a(a)(1) PC, a felony; Count 2, inflict injury on a child, 273d(a) PC, a felony; Count 3, cruelty to a child, 273a(a) PC, a felony; and Count 4, inflict injury on a child, 273d(a) PC, a felony. On July 5, 1995, the applicant was convicted of Counts 2 and 4. She was placed on probation for a period of 5 years, ordered to spend 180 days in jail, and pay \$200 in restitution fine. Counts 1 and 3 were dismissed.

An appeal that 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. 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 is dated April 22, 2004. 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 May 25, 2004. The instructions to the Form I-290B, Notice of Appeal, very clearly dictate 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 her appeal to the AAO. The appeal is not considered properly received until it is received by the Service Center that rendered the unfavorable decision. The appeal was properly received at the California Service Center on June 17, 2004.

An alien applying for TPS 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.

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

ORDER: The appeal is rejected.