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U.S. Citizenship  
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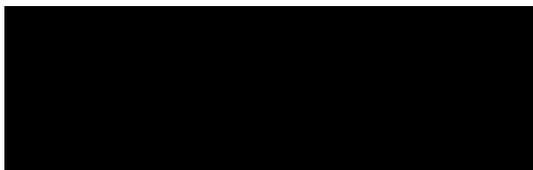
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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: JUN 15 2005  
[WAC 02 082 57095]

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.

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 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 noted that the applicant was convicted on August 7, 1989, of hit and run causing death or injury, in violation of section 20001(a) PC, a felony offense. He maintained that although the court, on July 14, 1997, permitted the applicant to withdraw his plea of guilty, set aside the verdict of guilty, and dismissed the case, the applicant remains convicted, for immigration purposes, despite the dismissal or expungement of his conviction. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). The director, therefore, concluded that the applicant was ineligible for TPS under section 244(c) (2)(B)(i) of the Act and denied the application on February 26, 2003.

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 February 26, 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 March 31, 2003. The appeal was received at the California Service Center on April 3, 2003.

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

The record contains an outstanding Warrant of Deportation, Form I-205, issued on March 6, 1989, and that the applicant failed to appear at the Los Angeles district office on March 20, 1989, for his enforced departure.

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.