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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: JUN 29 2005  
[WAC 04 066 51513]

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 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 after determining that the applicant had abandoned her application by failing to respond to a request for evidence.

On appeal, the applicant submits additional documents, including copies of documents previously furnished.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The Federal Bureau of Investigation (FBI) fingerprint results report shows that the applicant was arrested on June 27, 2002, for robbery. In a notice of intent to deny the application dated March 9, 2004, the applicant was requested to submit the final court disposition of any and all arrests, including the arrest for robbery. Because the applicant failed to respond, the director concluded that the applicant had abandoned her application and denied the application on April 22, 2004.

The record of proceeding, however, shows that the applicant did respond to the director's request for evidence. She submitted a letter dated March 18, 2004, from the San Diego Superior Court, North County Division, Vista, California, indicating, "No Criminal Record found at this time with information provided," regarding [REDACTED]. The document was received by the California Service Center on March 19, 2004, prior to the director's decision. Therefore, the director's finding that the applicant abandoned her application will be withdrawn, and a decision will be made based on the evidence of record.

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).

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).

8 C.F.R. § 103.2(a)(7) states, in part:

An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and...shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable will not retain a filing date.

The director's decision of denial, dated April 22, 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 May 25, 2004. The appeal was not properly received at the California Service Center until June 14, 2004, because the applicant had initially failed to include the required fee with the Form I-290B, Notice of Appeal.

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 resubmits a copy of the letter from the San Diego Superior Court, North County Division, dated March 18, 2004, detailed above. She also submits another letter from the San Diego Superior Court, North County Division, Vista, California, dated May 4, 2004, also indicating that no criminal record was found regarding [REDACTED]. It is noted, however, that the only information used by the court to search their records is the applicant's name. There is no evidence that the arrest information, such as the date and place of arrest and offense, including the applicant's date of birth and other pertinent information, were used for the search. Furthermore, there is no evidence that the applicant's case was heard at that court. It may be assumed that the applicant would have known where her case was heard.

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.