

Decision denied to
[Faint, illegible text]

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



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: OCT 17 2005
[WAC 01 245 53415]

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.


for 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 denied the application because the applicant had failed to submit all of the requested court documentation relating to his criminal record, and that the applicant had not established that he had not been convicted of either a felony or two or more misdemeanors pursuant to section 244(c)(2)(B)(i) of the Act.

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 August 11, 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 September 13, 2004. The appeal was received at the California Service Center on September 23, 2004.

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

It is noted that the applicant, on appeal, has not overcome the director's findings. The record contains the court documents relating to the following offenses:

- (1) On March 6, 2002, in the Superior Court of California, County of Los Angeles, California, Case No. [REDACTED] (arrest date February 3, 2002), the applicant was indicted for Count 1, driving under the influence of alcohol/drug, [REDACTED] VC, a misdemeanor; and Count 2, unlicensed driver, [REDACTED] VC, a misdemeanor. On April 15, 2002, the applicant was convicted of Count 1. He was placed on probation for a period of 36 months under the condition that he serve 108 days in the county jail, ordered to enroll and successfully complete a 3-month licensed first-offender alcohol and other drug education and counseling program, restrict driving for 90 days, and pay \$100 in restitution fund. Count 2 was dismissed.
- (2) On September 26, 1995, in the Municipal Court of Los Angeles, Central Arraignment Judicial, County of Los Angeles, California, Case No. [REDACTED] (arrest date September 24, 1995), the applicant, under the name of [REDACTED] was convicted of inflicting corporal injury on a spouse, [REDACTED] a misdemeanor. He was placed on probation for a period of 36 months under the condition that he serve 30 days in the county jail, ordered to pay \$100 in restitution fine, and enroll in a 12-month batterer's counseling program.

The applicant, on appeal, asserts that he is in the process of opening the case in court to vacate his criminal record. Even if the applicant's convictions were to be vacated or dismissed, the Board of Immigration Appeals (BIA), in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), held that under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. Therefore, the applicant is ineligible for TPS due to his two misdemeanor convictions, detailed in Nos. 1 and 2 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

The record shows that Form I-213, Record of Deportable/Inadmissible Alien, was issued on February 19, 2002, in Los Angeles, California.

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.