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FILE: [REDACTED]
[EAC 01 164 55263]

Office: VERMONT SERVICE CENTER

Date: **OCT 27 2005**

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.

Cindy N. Gomez
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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 a felony committed in the United States.

The record shows that on February 8, 2002, in the Circuit Court of Arlington County, Virginia, Case No. [REDACTED] (arrest date January 16, 2001), the applicant was convicted of grand larceny, 18.2-95 Virginia Code, a felony. She was sentenced to one year in jail, credit for time spent in confinement while awaiting trial, placed on probation for a period of one year, and ordered to pay \$348 in costs.

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 March 27, 2002, 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 April 29, 2002. The appeal was received at the Vermont Service Center on March 24, 2003.

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

It is noted that the applicant filed a TPS re-registration on October 21, 2002. The director denied this application because the initial TPS application had been denied. The applicant responded to the denial of the re-registration. She asserts that although she complied with the director's January 10, 2002, request for the court disposition of her criminal record, she is still waiting for a response and a final decision regarding her initial application.

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.