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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: JUL 24 2006

[WAC 05 137 74739]

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 California Service Center. Any further inquiry must be made to that office.

for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center (CSC) and is now before the Administrative Appeals Office (AAO) 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 record reveals that the applicant filed a Form I-821, Application for Temporary Protected Status, after the initial registration period under Citizenship and Immigration Services (CIS) receipt number SRC 04 002 54910. The Texas Service Center (TSC) Director denied that application on December 31, 2003, after determining that the applicant had failed to establish he was eligible for late initial registration. A subsequent late appeal was treated as a motion to reopen and denied by the TSC Director on July 7, 2004.

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 CSC Director's decision of denial, dated July 27, 2005, 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 August 29, 2005. The appeal was properly received at the California Service Center on August 31, 2005.

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

It is noted that, in removal proceedings held on October 18, 2001, an Immigration Judge in Houston, Texas, ordered the applicant deported "in absentia" to El Salvador. It is further noted that the record contains an outstanding Form-205, Warrant of Removal/Deportation, issued by the Acting District Director of the Houston, Texas, office of CIS, (formerly, the Immigration and Naturalization Service) on October 26, 2001.

It is also noted that the record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated June 10, 2001 indicating that the United States Border Patrol apprehended the applicant after he illegally entered the United States by wading across the Rio Grande River on June 8, 2001. Therefore, he cannot satisfy the continuous residence and continuous physical requirements described in 8 C.F.R. §§ 244.2(b) and (c) which require his continuous residence in the United States since February 13, 2001 and his continuous physical presence in this country since March 9, 2001.

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.

**ORDER:** The appeal is rejected.