



U.S. Citizenship
and Immigration
Services

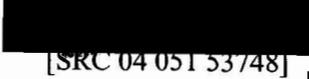
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



M1

FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUN 27 2006

[SRC 04 051 53748]

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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal.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 was granted Temporary Protected Status (TPS) on January 14, 2004. The director subsequently withdrew the applicant's Temporary Protected Status on December 8, 2004, when it was determined that the applicant had failed to establish continuous residence from February 13, 2001, to December 11, 2003, the filing date of filing of his TPS application, and continuous physical presence in the United States from March 9, 2001, to December 11, 2003.

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 director's decision withdrawing approval of the applicant's temporary protected status, dated December 8, 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 January 10, 2005. A Form I-290B, Notice of Appeal to the Administrative Appeals Unit (AAU), was enclosed with the withdrawal decision. The Form I-290B is very clear in indicating that the appeal is to be sent to the "office which made the unfavorable decision," in this case the California Service Center.

The applicant did not file an appeal with the California Service Center as instructed. Rather, he obtained a Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals from a Decision of an INS Officer, and attempted to file the application with the Board of Immigration Appeals (BIA) on January 10, 2005. The applicant did not file a Form I-290B with the California Service Center until February 7, 2005, almost two months after the issuance date of the withdrawal decision.

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 has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States throughout the requisite periods.

An alien applying for temporary protected status 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. The applicant has failed to meet this burden.

ORDER: The appeal is rejected.