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MM

FILE:

[REDACTED]
[WAC 05 097 73859]

Office: CALIFORNIA SERVICE CENTER

Date: **MAR 27 2006**

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 (AAO) on appeal. The appeal will be rejected.

The applicant claims to be a citizen of Honduras 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 his initial TPS application on January 25, 1999, under CIS receipt number EAC 99 131 50683. The record reflects that the Director, Vermont Service Center, withdrew the approval of that application for TPS on January 3, 2003. On February 5, 2003, the applicant filed an appeal which was dismissed by the Director of the AAO on November 7, 2003.

The applicant filed the instant Form I-821, Application for Temporary Protected Status, on January 5, 2005, and indicated that he was re-registering for TPS. On April 21, 2005, the director denied the instant re-registration application because the applicant's TPS had been denied and the applicant was not eligible to apply for re-registration for TPS.

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 or her 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 April 21, 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 May 24, 2005. The director's notice is very clear in indicating that the appeal is to be sent directly to the "this office", the California Service Center, that made the unfavorable decision. The applicant, nevertheless, sent his appeal to the Vermont Service Center. The appeal is not considered properly received until it is received by the Service Center that rendered the unfavorable decision. The appeal was received at the California Service Center on June 29, 2005.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

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

ORDER: The appeal is rejected.