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U.S. Citizenship
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[REDACTED]

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: SEP 05 2006
[WAC 05 140 78048]

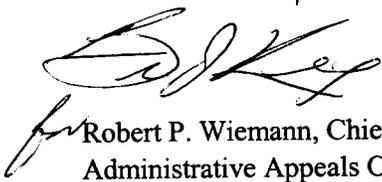
IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:
[REDACTED]

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, Chief
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 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 applicant filed his initial TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number WAC 01 195 50504. The applicant's Federal Bureau of Investigation (FBI) fingerprint results report revealed the following offenses:

1. On October 6, 1998, the applicant was arrested in Salinas, California, and charged with one count of driving with a suspended license/refusal of DUI sobriety test, and one count of failure to provide proof of financial responsibility.
2. On July 14, 2002, the applicant was arrested in Salinas, California, and charged with one count of driving under the influence of alcohol and three counts of hit and run.
3. On June 8, 2003, the applicant was arrested in Atwater, California, and charged with one count of driving under the influence of alcohol, one count of driving on a suspended license, and one count of contempt/disobeying a court order.

On December 26, 2003, the applicant was requested to provide the final court dispositions of his arrests. He was also requested to provide evidence to establish his identity and nationality and his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant, in response, provided evidence establishing his identity and nationality and evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods; however, he failed to provide the final court dispositions of his arrests.

The director denied that application on April 28, 2004, because he found that the applicant had failed to submit requested court documentation relating to his criminal record.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 17, 2005, and indicated that he was re-registering for TPS or renewing his temporary treatment benefits.

The director denied the application on September 6, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration or renewal of his temporary treatment benefits.

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 of denial, dated September 6, 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 October 10, 2005. The Form I-290B, Notice of Appeal, is very clear in indicating that the appeal is not to be sent directly to the AAO; but, rather, to the "office which made the unfavorable decision." The applicant, nevertheless, sent his appeal to the AAO. The appeal is not considered properly received until it is received by the Service Center that rendered the unfavorable decision. The appeal was not properly received at the California Service Center until October 20, 2005.

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

It is noted that the applicant, to date, remains ineligible for TPS due to his failure to provide the final court dispositions of his arrests. 8 C.F.R. § 244.9(a).

It is further noted that the record contains an outstanding warrant of removal issued by the District Director, San Francisco, California, on August 31, 1998.

ORDER: The appeal is rejected.