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U.S. Citizenship  
and Immigration  
Services

M,

[REDACTED]

FILE:

[REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER

DATE:

DEC 07 2007

[WAC 01 171 55698]

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office 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 director noted that the applicant was convicted of three misdemeanors in California: (1) on December 19, 2000, of 23152(b) VC, driving with .08 percent blood alcohol level or more, and 20002(a) VC, hit and run driving causing property damage (Case No. [REDACTED] and (2) on May 29, 1992 of 23152(b) VC, driving with .08 percent blood alcohol level or more (Case No. [REDACTED]. The director, therefore, denied the application.

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).

8 C.F.R. § 103.2(a)(7) states, in part:

An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and...shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable will not retain a filing date.

The director's decision of denial, dated February 10, 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 March 15, 2004. The appeal was not properly received at the California Service Center until May 5, 2004, because the applicant had initially failed to sign the Form I-290B, Notice of Appeal.

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, on appeal, has not overcome the director's findings. The applicant submits an order of the Superior Court of Los Angeles County, California, expunging his May 29, 1992 conviction under Case No. [REDACTED]. The Board of Immigration Appeals, in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), held that under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. Therefore, the applicant remains convicted, for immigration purposes, of the three misdemeanor offenses listed above.

It is further noted that the Federal Bureau of Investigation fingerprint results report shows that the applicant was placed in removal proceedings in Los Angeles, California, on October 25, 1979; and that he voluntarily departed from the United States.

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.