

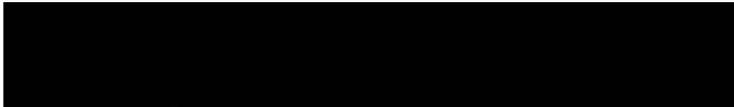


U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **JAN 17 2007**
[WAC 05 228 87415]

IN RE: Applicant: [REDACTED]

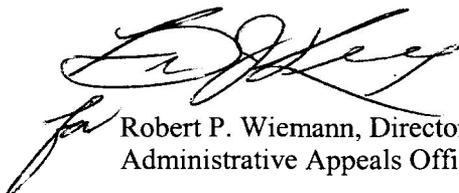
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 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 denied the application because the applicant had failed to establish that she was eligible for late registration.

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 May 31, 2006, 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 July 3, 2006. The appeal was received at the California Service Center on July 5, 2006.

If an untimely appeal meets the requirements of a motion to reopen as described in § 103.5(a)(2) or a motion to reconsider as described in § 103.5(a)(3), the appeal must be treated as a motion, and a decision must be made on the merits of the case. 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

The untimely appeal does not meet the requirements of a motion. Therefore, based upon the applicant's failure to file a timely appeal, the appeal will be rejected.

It is noted that the applicant, on appeal, has not overcome the director's finding. Counsel, on appeal, submits a statement from the applicant's brother dated June 20, 2006, and also resubmits a copy of the applicant's statement dated April 8, 2005, stating that the applicant appeared at a church "La Popular" to request help in filing the application for Temporary Protected Status; however, she was told to wait for "the political asylum permit," and although she received a letter from INS telling her that she would receive a work permit within 90 days, she has received nothing. She stated that she "was lulled into a false sense of security by that church." Citing *Rodriguez-Lariz v. INS*, 282 F. 3d 1218 (9th Cir. 2002), and *Lopez v. INS*, 184 F. 3d 1097 (9th Cir. 1999), counsel asserts that "equitable tolling of deadlines has been recognized by the 9th Circuit Court of Appeals as to motions to reopen when the person filing for such motions to reopen was prevented from doing so in a timely fashion because of deception, fraud and error and acted as soon as the fraud was discovered."

The case law cited by counsel is not on point as it relates to the timely filing of motions to reopen. This applicant's case relates to the timely filing of TPS applications during the date required by law. The AAO is bound by the clear language of the statute and lacks the authority to change the statute. Further, there is no provision to waive the registration requirement other than those described in 8 C.F.R. § 244.2(f)(2). The applicant has failed to establish that she has met any of the criteria for late registration described in this section. Also noteworthy is the fact that neither the applicant nor her brother offered the date the applicant appeared at the church seeking help; there is no evidence of deception, fraud, or error as claimed; nor is there

evidence that the representative from the church represented himself/herself as a lawyer as stipulated in the case law cited by counsel.

It is noted that on January 6, 1998, in San Francisco, California, the Immigration Judge denied the Application for Asylum and for Withholding of Deportation; the Board of Immigration Appeals (BIA) dismissed the applicant's appeal on March 24, 1999; and the United States Court of Appeals for the Ninth Circuit affirmed the decision of the BIA on July 19, 2000. A Warrant of Removal/Deportation was issued in San Francisco, California, on July 19, 2000. As provided in 8 C.F.R. § 244.2(g), the applicant had a 60-day period immediately following the expiration or termination of condition described in 8 C.F.R. § 244.2(f)(2), in this case, after the decision of the Ninth Circuit Court on July 19, 2000; however, that decision was made prior to the TPS registration period for El Salvadorans.

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.