



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[WAC 05 217 72416]

Office: CALIFORNIA SERVICE CENTER

Date: JUL 23 2007

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 (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 determined that the applicant failed to establish he: 1) had continuously resided in the United States since February 13, 2001; 2) had been continuously physically present in the United States since March 9, 2001; and 3) was eligible for late registration. 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).

The director's decision of denial, dated September 13, 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 October 16, 2007. The appeal, however was not received at the California Service Center until October 30, 2006. It is noted that the appeal was received at the AAO on October 17, 2006 and returned to the applicant that same day so that the application could be submitted to California Service Center. Therefore, the appeal was not properly filed until it was received at the California Service Center. According to 8 C.F.R. § 103.2(a)(7), "**properly filed**" means:

An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204, part 245 or part 245a of this chapter, shall be regarded as **properly filed** when so stamped, if it is signed and executed and the required filing fee is attached or waiver of the filing fee is granted failed to submit a completed application during the initial registration period.

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

It is also noted that the applicant indicates on his TPS application that he entered the United States on September 20, 2004. By his own admission, the applicant arrived in the United States subsequent to the eligibility period. Therefore, he cannot satisfy the residence and physical requirements described in 8 C.F.R. §§ 244.2(b) and (c)

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.