



U.S. Citizenship  
and Immigration  
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: JUN 25 2007

[WAC 05 223 77727]

IN RE:

Applicant:



APPLICATION:

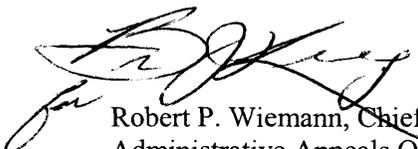
Application for Temporary Protected Status under Section 244 of the  
Immigration and Nationality Act, 8 U.S.C. § 1254

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.

  
for  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center (CSC), 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 respond to the Notice of Intent to Deny dated May 4, 2006, to submit evidence to establish: (1) that he was eligible for late registration; (2) his nationality and identity; and (3) that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing 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 denial decision dated July 18, 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 August 21, 2006. The director's decision and the Form I-290B (Notice of Appeal) are very clear in indicating that the appeal is not to be sent directly to the AAO, but, rather, to the office that made the unfavorable decision. The applicant, nevertheless, sent his appeal to the AAO; the appeal was returned to the applicant on August 16, 2006. The applicant subsequently sent the appeal to the CSC. On August 29, 2006, the CSC returned the appeal to the applicant because the appeal had not been properly signed. The appeal was properly received at the CSC on September 7, 2006.

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 findings. The record of proceeding contains the applicant's identification document issued in El Salvador on April 24, 2003. The Form I-213, Record of Removable/Deportable Alien, issued in Kodiak, Alaska, on September 5, 2006, indicates that the applicant had initially stated to the Immigration Officer that he entered the United States on January 29, 2001. However, when the officer confronted the applicant with his El Salvadoran identification card that was issued in El Salvador on April 24, 2003, the applicant admitted to entering the United States shortly after the card was issued to him. Therefore, the applicant could not have met the criteria required to establish continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001,

because the applicant was not present in the United States during the requisite period described in 8 C.F.R. 244.2(b) and (c).

It is further noted that in removal proceedings held in Seattle, Washington, on October 19, 2006, the Immigration Judge granted the applicant voluntary departure on or before December 18, 2006. The applicant departed from the United States to El Salvador on December 16, 2006.

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.