



U.S. Citizenship  
and Immigration  
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: MAR 26 2007

[WAC 05 211 70223]

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:



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 record reveals that the applicant filed a TPS application during the initial registration period on September 6, 2002, under Citizenship and Immigration Services (CIS) receipt number EAC 02 281 53613. The Director, Vermont Service Center (VSC), denied that application on June 25, 2004, because the evidence furnished by the applicant, in response to the Notice of Intent to Deny, was insufficient to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant appealed the director's decision to the AAO on July 26, 2004. The AAO affirmed the director's decision and dismissed the appeal on September 26, 2005, after determining that the applicant had provided no additional documentation to demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 29, 2005, and indicated that he was re-registering for TPS. The Director, California Service Center (CSC) denied the re-registration application on August 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

A review of the record of proceeding indicates that during the pendency of Form I-290B, Notice of Appeal to the Administrative Appeals Office, filed on July 26, 2004, the applicant filed the re-registration application on April 29, 2005. The CSC director denied the re-registration application on August 16, 2005, and the applicant appealed this decision of the director on September 21, 2005. In the interim, the AAO adjudicated and subsequently denied the initial TPS application on September 26, 2005. Therefore, as of September 26, 2005, and prior to the adjudication of the applicant's present appeal regarding his re-registration application, the applicant's initial TPS application was no longer pending. A remand of this case to the director based on a premature denial of the re-registration application would not overcome the denial of the applicant's initial TPS application, because the record as presently constituted contains insufficient evidence to establish that the applicant has met the criteria for continuous residence and continuous physical presence in the United States during the requisite period.

As noted above, on September 21, 2005, the applicant appealed the CSC director's decision to deny the re-registration application.

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 to deny the re-registration application, dated August 16, 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 September 19, 2005. The appeal was received at the California Service Center on September 21, 2005.



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

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.