



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: California Service Center Date: **MAY 02 2007**
[SRC 01 215 55061]

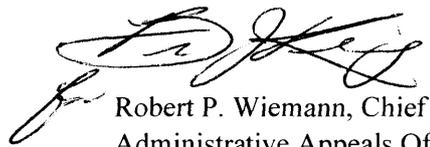
IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:
[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the California Service Center. 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 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 an initial TPS application on May 22, 2001 under CIS receipt number SRC 01 215 55061. The director denied that application on May 3, 2006, because the applicant failed to maintain eligibility for TPS. The director noted that the applicant's Federal Bureau of Investigation (FBI) results report, completed in connection with his subsequent TPS re-registration application, reflects that the applicant was convicted for a charge of and arrest, on January 1, 2004, for Assault Causes Bodily Injury, and convicted for a charge of and arrest, on February 17, 2005, for F – Prostitution. The director also noted that the applicant submitted a response to an October 17, 2005, notice of intent to deny to submit final court dispositions for the two arrests. However, the response did not include the requested final court dispositions. The director determined that since the applicant has been convicted of two or more misdemeanors, the applicant is ineligible for TPS.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The director accepted the applicant's response as an appeal and forwarded the file to the AAO. As the director's decision is not based on abandonment, the AAO accepts the appeal.

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 of denial is dated January 17, 2006, and was mailed to the last known address. 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 February 20, 2006. The appeal was received at the California Service Center on February 24, 2006.

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

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is rejected.