



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SEVICE CENTER Date: JAN 10 2008

[EAC 07 006 44088]

[EAC 07 188 51920-motion]

INRE:

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vennont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. for review. The appeal will be rejected.

The applicant claims to be 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 director denied the application because the applicant failed to establish: 1) he was eligible for late registration; 2) his qualifying continuous residence in the United States during the requisite period; and 3) his continuous physical presence in the United States during the requisite period.

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. § 103J(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 regulation at 8 C.F.R. § 103J(a)(2) states an appeal must be accompanied by a nonrefundable fee as set forth in 8 C.F.R. § 103.7. An application, which is submitted with the wrong filing fee, shall be rejected as improperly filed. 8 C.F.R. § 103.2(a)(7)(i). As of September 28, 2005, the fee for filing an appeal is \$385.00. *See* 8 C.F.R. § 103.7(b)(3).

The director's decision of denial is dated May 23, 2007. Any appeal must be properly filed within thirty days after service of the decision. 8 C.F.R. § 103J(a)(2)(i). Coupled with three days for mailing, the appeal, in this case, should have been filed on or before June 25, 2007. Counsel submitted an appeal which was received at Vermont Service Center on June 19, 2007, along with an incorrect fee for the appeal. The appeal with the correct filing fee was subsequently received at the Vennont Service Center on July 5, 2007, 43 days after the decision was issued.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

An alien applying for TPS 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.

As the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

Finally, the record reflects that the applicant filed a Form 1-589, Application for Asylum and Withholding of Removal, on August 5, 1988. On June 19, 1989, the asylum request was denied. On June 26, 1989, a Form 1-221, Order to Show Cause and Notice of Hearing, was issued. On June 27, 1990, the applicant was ordered deported to El Salvador. On February 2, 1996, the applicant filed a second Form 1-589 application. An appointment notice was issued on April 6, 2005, which requested the applicant to appear before the Citizenship and Immigration Services Office in Rosedale, New York on April 27, 2005. The record does not contain a final decision for the second asylum application.

ORDER: The appeal is rejected.