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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

[WAC 05 203 72722]

[WAC 08 002 51733-appeal]

OFFICE: CALIFORNIA SERVICE CENTER DATE: JAN 11 2008

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:

Self-represented

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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The applicant claims to be 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 reflects that the applicant filed a TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number SRCO115264289. The Director, Texas Service Center, denied that application on July 22, 2003, due to abandonment. The applicant's motion to reopen from the denial of that application was denied by the Director, Texas Service Center, on September 23, 2003.

The applicant filed the current TPS application on February 21, 2005, and indicated that he was re-registering for TPS. The Director, California Service Center, denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. The applicant's appeal from the denial of this application was filed on November 7, 2005.¹ On November 23, 2005, the Director, California Service Center, issued a Notice of Rejected Appeal, which informed the applicant that his appeal had been untimely filed and the appeal did not meet the requirements of a motion to reopen or reconsider pursuant to 8 C.P.R. § 103.5(a)(2) and (3). On April 11, 2007, the applicant filed a motion to reopen under CIS receipt number WAC0713951395. CIS electronic records reflect that on May 23, 2007, the motion was granted.

On August 21, 2007, the director denied the application because he found the applicant had been convicted of two misdemeanors in the United States.

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.P.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 regulation at 8 c.P.R. § 103.3(a)(2) states an appeal must be accompanied by a nonrefundable fee as set forth in 8 C.P.R. § 103.7.

The director's decision of denial is dated August 21, 2007. Any appeal must be properly filed within thirty days after service of the decision. 8 C.P.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 24, 2007.² The appeal was received at the California Service Center on September 27, 2007, 37 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.P.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.

¹ The applicant initially filed an appeal on October 12, 2005; however, it was accompanied by an incorrect filing fee.

² The 33rd day, September 23, 2007, fell on a Sunday.

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.

ORDER: The appeal is rejected.