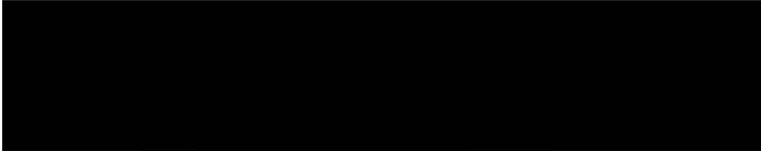




U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC copy



M₁

FILE:



Office: VERMONT SERVICE CENTER

Date: JUL 08 2008

[EAC 03 230 52507, *appealJ*
[EAC 02 002 54404]

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 Vermont Service Center. Any further inquiry must be made to that office.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vennont Service Center denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (fPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.c. § 1254.

In order to properly file an appeal, the regulation at 8 C.F.R § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days after the service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. See 8 C.F.R § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. See 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued the decision on July 3, 2003. It is noted that the director properly gave notice to the applicant that he had 33 days to file the appeal. However, it was received by the director on August 7, 2003; more than 33 days after the decision was issued. Accordingly, the appeal was untimely filed.

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 provided 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 requirement 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).

It is noted that the applicant was deported from the United States to El Salvador on March 12, 2004.

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

ORDER: The appeal is rejected.