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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

APR 05 2004

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:

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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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 indicated on his application that he entered the United States on August 11, 2000, without a lawful admission or parole. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

An appeal which 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).

If an untimely appeal meets the requirements of a motion to reopen as described in section 103.5(a)(2) of this part or a motion to reconsider as described in section 103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case. 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

A motion to reopen must state the new facts to be proved at 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 reason 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 ... [and] 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).

The applicant, on appeal, indicated that he would provide a brief within 30 days. The AAO received a letter dated October 1, 2003, from Mr. Christopher J. Cassar, Attorney at Law, indicating that his office will be representing the applicant. However, Mr. Cassar has not provided a Notice of Entry of Appearance as Attorney or Representative (Form G-28). Further, the record contains a Form G-28 from Ms. Victoria Campos of the Law Office of Victoria Campos, PC, executed by the applicant on July 8, 2002. There is no evidence that Ms. Campos' appearance as counsel has been withdrawn.

Along with his letter, Mr. Cassar provided an undated letter from the applicant's employer and a copy of his employment authorization card. The applicant does not state any "new facts to be proved" as is required of motions to reopen. 8 C.F.R. § 103.5(a)(2). The applicant does not establish that the decision was incorrect or support the appeal with any pertinent precedent decisions as is required of motions to reconsider in 8 C.F.R. § 103.5(a)(3). Therefore, this untimely appeal will not be considered a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

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 decision, dated May 1, 2003, clearly advised the applicant that any appeal must be filed within thirty days. Coupled with three days for mailing, the appeal, in this case, should have been filed on or before June 2, 2003. The appeal was dated by the applicant on June 2, 2003, and received by Citizenship and Immigration Services (CIS), on June 6, 2003.

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

ORDER: The appeal is rejected.