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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship
and Immigration
Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: APR 15 2004

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: Self-represented

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, Texas 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 November 10, 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 was eligible for late registration.

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, explained that he had entered the United States in November 2000. Further, the applicant indicated that he was submitting new evidence; however, it does not appear that any new evidence was submitted with his appeal. The applicant does not specify any "new facts to be provided", nor is the appeal "supported by affidavits or other documentary evidence" as is required of motions to reopen in 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 director erred by indicating that the decision was issued on March 10, 2002. Both the record of proceedings and Citizenship and Immigration Services (CIS) computer records show that the actual date of the decision was March 10, 2003. The decision 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 April 12, 2003.

The Form I-290B, Notice of Appeal, is very clear in indicating that the appeal is <u>not</u> to be sent directly to the AAO; but rather, to the "office which made the unfavorable decision." The applicant, nevertheless, sent his appeal to the AAO. The appeal is not properly received until it is received by the Service Center that rendered the decision. The appeal was properly received at the respective Service Center on May 1, 2003.

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

ORDER: The appeal is rejected.