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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

APR 20 2004

FILE: [redacted] Office: TEXAS 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: 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.

Cindy M. Gomez for

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 on appeal. The appeal will be rejected.

The director denied the application because the applicant failed to establish that he is a national of a foreign state designated by the Attorney General and eligible for the granting of Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254. The applicant is a citizen and national of Mexico and that country has not been so designated under section 244 of the Act.

8 C.F.R. § 103.3(a)(2)(v)(B) states:

> *Untimely appeal--(1) Rejection without refund of filing fee.* 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.
>
> *(2) Untimely appeal treated as motion.* If an untimely appeal meets the requirements of a motion to reopen as described in § 103.5(a)(2) of this part or a motion to reconsider as described in § 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.

The applicant, on appeal, states that he is the spouse of an alien who had been granted temporary protected status, and that he needs to obtain temporary protected status in order to preserve the family unit. The applicant submits a copy of his wife's birth certificate, his marriage license, his daughter's birth certificate, an identification card issued to him in Texas, a consular registration card issued to him by the Mexican government in October 1997, and an October 11, 2002 approval notice, which reflects that his wife was granted TPS for the period from October 11, 2002 to September 9, 2003. The applicant does not furnish any evidence to establish that he is a national of a foreign state designated by the Attorney General as eligible for granting of TPS, pursuant to 8 U.S.C. § 1254 of the Act. Further, even if the applicant were the spouse of a national of a TPS-designated country, the marriage must have taken place prior to the end of the initial registration period. Thus, the applicant's statement on appeal does not meet the requirements of a motion.

Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice 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 January 29, 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 February 28, 2003. The Form 290B, Notice of Appeal, is very clear in indicating that the appeal is not to be sent directly to the AAO office; but, rather, to the "office which (sic) made the unfavorable decision." The applicant, nevertheless, sent his appeal to the AAO. The appeal is not considered properly received until it is received by the service center that rendered the unfavorable decision. The appeal was properly received at the respective service center on March 10, 2003.

Based on the applicant's failure to file a timely appeal, the appeal must be rejected.

The burden of proof is upon the applicant to establish that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is rejected.