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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

MAR 29 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: 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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The applicant is 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 director determined that the applicant was ineligible for TPS because he had been convicted of two misdemeanor offenses committed in the United States; namely, vehicle tampering and petit larceny on October 19, 1998. The director, therefore, denied the application.

On appeal, the applicant states that at the time of his arrests, he was new in this country and could not speak English. He asserts that the officer explained to him that although his fingerprints were not found on the car, he should plead guilty because he was in the car. He submits a letter of employment and a statement from his father-in-law.

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General [now the Secretary of the Department of Homeland Security (the Secretary)] finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

8 C.F.R. § 103.3(a)(2) states, in pertinent part, that the affected party shall file an appeal, with fee, including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.

8 C.F.R. § 103.3(a)(2)(v)(B)(1) states, in part:

> 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.

Additionally, 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states, in part:

> 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's statement, on appeal, does not meet the requirements of a motion.

8 C.F.R. § 103.5a(b) states that 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. § 103.2(a)(7) states, in part:

> An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and....shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable will not retain a filing date.

The record reflects that the director denied the application on February 18, 2003. The applicant was advised that he could file an appeal, along with the required fee, within 30 days of the date of the decision. The applicant subsequently filed an appeal; however, the applicant was advised that his application could not be accepted because the proper fee was not attached. He was further advised that since the case was not properly filed, a priority or processing date could not be assigned. On April 11, 2003, 52 days after the director's decision was issued, the appeal was received, with the proper fee, at the Vermont Service Center, the office where the unfavorable decision was made.

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

ORDER: The appeal is rejected.