U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

PUBLIC COPY
identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

[redacted]

M1

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 25 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, California 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 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 failed to establish that he has maintained continuous physical presence in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, states that he arrived in the United States in October 2000, and that it is hard for him to have a lot of evidence in just a few months. He submits additional evidence.

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, in part, 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 my mail is complete upon mailing

The record reflects that the director denied the application on February 27, 2003. The applicant was advised that he may file an appeal, along with the required fee and any supporting brief within 30 days of the service of the decision. 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 [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. On April 23, 2003, approximately two months after the director's decision, the appeal was received, with fee, at the California 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.