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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

M



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: APR 07 2005

IN RE:

Applicant:



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 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 failed to comply with his request on October 26, 2002, to submit the final court disposition of his arrest on May 1, 1996, in Los Angeles, California, for assault with a deadly weapon-no firearms/great bodily harm, a felony offense. The director, therefore, denied the application.

An appeal that is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee accepted will not be refunded. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

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's decision of denial, dated September 22, 2003, clearly advised the applicant that any appeal must be properly filed within thirty days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). Coupled with three days for mailing, the appeal, in this case, should have been filed on or before October 27, 2003. The appeal was received at the California Service Center on October 28, 2003.

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

It is noted for the record that the applicant, on appeal, has not overcome the director's findings. The applicant states that he did present the necessary document that was requested by the director. He submits a copy of a notice by the Los Angeles Police Department dated February 6, 2003, indicating that the department "will send a certified copy of the arrest report directly to the INS." To date, no arrest report was received from the police department. Regardless, the applicant had failed to submit the certified final court disposition of his arrest(s) from the court where the hearing took place.

The record shows that on July 2, 1995, the Immigration Judge (IJ) denied the applicant's application for asylum and withholding of deportation, and granted the applicant voluntary departure to El Salvador on or before October 2, 1996, with an alternate order of deportation if he should fail to depart voluntarily. The applicant appealed the decision of the IJ to the Board of Immigration Appeals (BIA). On March 6, 1998, the BIA dismissed the appeal and permitted the applicant to depart from the United States voluntarily within 30 days from the date of the order, and that in the event of the applicant's failure to depart, he shall be deported as provided in the IJ's order. The applicant failed to depart as required. He also failed to appear at the Los Angeles district office on May 22, 1998, for his enforced departure.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The appeal is rejected.