



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **AUG 01 2006**  
[WAC 05 153 76288]

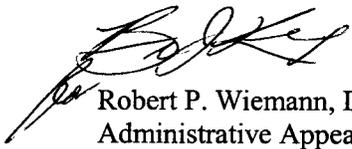
IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration  
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:  
[REDACTED]

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 record reveals that the applicant filed a TPS application during the initial registration period on March 20, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 165 50214. The director denied that application on July 23, 2004, after determining that the applicant had abandoned his application based on his failure to appear for fingerprinting on February 13, 2004. On September 1, 2004, the director also dismissed the motion to reopen, filed by the applicant on August 13, 2004, because the motion to reopen did not state new facts and supported by affidavits or other documentary evidence. The director noted that the notice to appear for fingerprinting and the director's denial decision were mailed to the applicant's address

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 2, 2005, and indicated that this is his "first application to register for Temporary Protected Status (TPS)."

The director treated the application as a re-registration application and determined that because the applicant's initial TPS application had been denied, the applicant was not eligible to apply for re-registration for TPS.

This application will be treated as the applicant's "first application" to register for TPS. However, the applicant, on appeal, neither addressed nor submitted any evidence to establish that he falls under any of the criteria for late initial registration provided in 8 C.F.R. § 244.2(f)(2). He asserts that he is eligible for TPS status and that any decision to the contrary is in error. He further asserts that he did not receive the notice for fingerprinting.

An appeal that 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).

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).

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 director's decision of denial, dated September 8, 2005, 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 11, 2005. The appeal was received at the California Service Center on October 17, 2005. However, the appeal (Form I-290B) was

returned to the applicant on October 17, 2005, and the applicant was advised to submit the correct filing fee. The appeal was properly received at the California Service Center, with the correct filing fee, on November 14, 2005.

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

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.