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FILE:



Office: Nebraska Service Center

Date: **JAN 05 2006**

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IN RE:

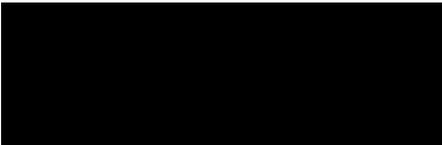
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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, Nebraska Service Center (NSC), 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 denied the instant application on July 29, 2003, because the applicant failed to establish he was eligible for late registration. The director also denied the application because the applicant failed to establish that he entered and resided in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. In addition, the applicant failed to provide a copy of his birth certificate or passport, and evidence that [REDACTED] are one and the same person.

Counsel, on behalf of the applicant, filed an appeal which was received by the NSC on September 2, 2003. The appeal was untimely filed and therefore, the director treated the appeal as a motion to reopen, pursuant to 8 C.F.R. § 103.3(a)(1)(v)(B)(2), and rendered a decision on the merits of the case. After a complete review of the record of proceedings, including the motion, the director determined that the grounds for denial had not been overcome. The director, therefore, affirmed his previous decision and denied the application on February 19, 2004.

On March 29, 2004, counsel filed an appeal to the director's February 19, 2004 decision, which is now before the AAO.

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 February 19, 2004, 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 March 23, 2004. The Form I-290B, Notice of Appeal, is very clear in indicating that the appeal is not to be sent directly to the AAO; but, rather, to the "office which made the unfavorable decision." Counsel, nevertheless, sent the 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 received at the Nebraska Service Center on March 29, 2004.

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

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

ORDER: The appeal is rejected.