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U.S. Citizenship
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Services

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FILE:

[REDACTED]

OFFICE: Vermont Service Center

DATE: APR 27 2007

[EAC 05 226 71175]

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant is a 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 applicant filed an Application for Temporary Protected Status, Form I-821, on May 14, 2005. The director, VSC, denied the application on July 21, 2006, on the grounds that the applicant failed to establish that she was eligible for late TPS registration (her application was filed after the initial registration period for El Salvadoran nationals), that she was continuously physically present in the United States from March 9, 2001 until the date her TPS application was filed, and that she had continuously resided in the United States since February 13, 2001.

As provided in 8 C.F.R. § 103.3(a)(2)(i), an appeal together with the fee specified in 8 C.F.R. § 103.7 must be filed “with the office where the unfavorable decision was made” within 30 days of the date the decision was served. Three additional days are allowed for an appeal if the notice of decision was served by mail. *See* 8 C.F.R. § 103.5a(b). Since the notice of decision was mailed to the applicant in this case, a 33-day appeal period applies. If the last day of the appeal period falls on a weekend or a holiday, the deadline is extended until the next working day. *See* 8 C.F.R. § 1.1(h).

The service center’s decision was issued on July 21, 2006. Under the regulations, therefore, the filing deadline for an appeal was Wednesday, August 23, 2006 – 33 days after the decision was served by mail. As specified in the regulations, a properly prepared document is filed on the date it is received by Citizenship and Immigration Services (CIS).

An application or petition received in a [CIS] 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.”

8 C.F.R. § 103.2(a)(7). (Emphasis added.) The petitioner’s appeal (Form I-290B) bears a receipt stamp showing that it was received by the California Service Center on Thursday, August 24, 2006 at 7:04 a.m. That was one day after the deadline for filing an appeal. The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(1) provides that “[a]n appeal which is not filed within the time allowed must be rejected as improperly filed.”

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.3(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO. Since the appeal was not timely filed with the service center, it must be rejected.

An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act.

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

ORDER: The appeal is rejected.