



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: Vermont Service Center

Date:

**APR 27 2007**

[EAC 01 160 52227]

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, Chief  
Administrative Appeals Office

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

The applicant claims to be a citizen of Honduras 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 application because the applicant was not qualified for TPS due to his felony conviction in the United States.

A subsequent appeal to the director was rejected as untimely on December 18, 2003. The applicant filed a Notice of Appeal to the rejection on January 13, 2004. The director declined to treat the appeal as a motion forwarded the appeal to 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 is dated December 4, 2002. 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 January 6, 2003. The appeal was received at the Vermont Service Center on January 13, 2004.

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.

If an untimely appeal meets the requirement of a motion to reopen the appeal must be treated as a motion. In this case the appeal does not meet the requirements of a motion and the appeal will be rejected as untimely. 8 C.F.R. § 103.3(a)(2)(v)(B)(2)

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

**ORDER:** The appeal is rejected.