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**U.S. Citizenship
and Immigration
Services**

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FILE:

[WAC 05 158 71214]

OFFICE: California Service Center

DATE: **AUG 02 2007**

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.

A handwritten signature in black ink, appearing to read "R. P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The director denied the application on the ground that court dispositions submitted by the applicant confirmed that he had been convicted (on June 3, 2003, and January 20, 2004) of two misdemeanors committed in the United States, making him ineligible for Temporary Protected Status under section 244(c)(2)(B) of the Immigration and Nationality Act.

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. *See* 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. *See* 8 C.F.R. § 103.5a(b). If the last day of the period for taking an action 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 director's decision of denial is dated January 12, 2007. As provided in 8 C.F.R. § 103.3(a)(2)(i), an appeal must be filed within thirty days after service of the decision. Together with the three days for mailing, the appeal in this case should have been filed on or before Wednesday, February 14, 2007. As the receipt stamp on the Form I-290B indicates, however, the applicant's appeal was received at the California Service Center on February 16, 2007. Therefore, it must be rejected.¹

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.

¹ Though the appeal must be rejected, the AAO notes that counsel submitted a copy of the final court disposition of the applicant's misdemeanor conviction on January 20, 2004, arguing that it was his only conviction. The record also contains a final court disposition of the applicant's other misdemeanor conviction on June 3, 2003, however, which counsel ignores on appeal. Thus, the appeal would not be sustainable even if it had been timely filed.