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U.S. Citizenship
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FILE: [REDACTED] OFFICE: California Service Center DATE: FEB 15 2007
[WAC 01 164 51180]
[WAC 05 207 82585]

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, withdrew the applicant's previously granted Temporary Protected Status and denied the application for re-registration. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

While there is correspondence in the record indicating that the applicant is represented by counsel, the record does not contain a Form G-28, Notice of Entry of Appearance as Attorney or Representative. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

The applicant claims to be 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, who was initially approved for TPS on August 12, 2001, filed the current application to re-register for TPS on April 25, 2005. On August 30, 2005 the director issued a Notice of Intent to Withdraw the applicant's TPS on the basis of two arrests that had come to the service center's attention – which occurred in Gilroy, California, on August 31, 2001, and in San Jose, California, on November 20, 2001. The director gave the applicant 30 days to submit the final court disposition(s) showing that he had not been convicted of a felony or two misdemeanors, or a personal attestation of the same if was unable to obtain the final court disposition(s). After the applicant failed to submit the requested evidence, the director issued a Notice of Withdrawal of TPS on March 23, 2006, advising the applicant that his failure to timely and adequately respond to the Notice of Intent to Withdraw constituted both a failure to re-register for TPS in accordance with 8 C.F.R. § 244.17(a) and an abandonment of his re-registration application under 8 C.F.R. § 244.9(c).

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 March 23, 2006. Under the regulations, therefore, the filing deadline for an appeal was Tuesday, April 25, 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, April 27, 2006 at 6:25 p.m. That was two days 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.