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U.S. Citizenship
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FILE:

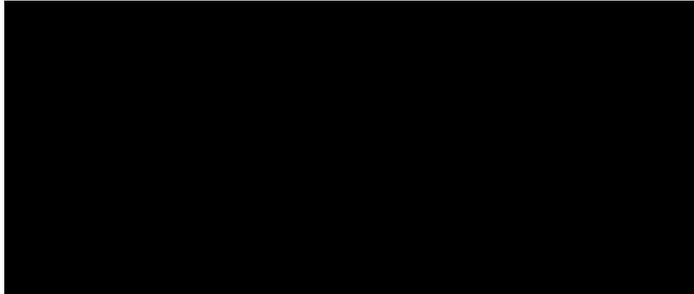


OFFICE: CALIFORNIA SERVICE CENTER

DATE: AUG 08 2005

IN RE:

Applicant:



APPLICATION:

Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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, California Service Center, 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 applying for readmission into the United States after deportation or removal pursuant to 8 C.F.R. § 212.2(a).

The director denied the application because the applicant was inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(I) of the Act, based on his conviction on March 17, 1988, of the felony offense of involuntary manslaughter, 192(b) PC, found to involve moral turpitude.

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 October 7, 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 November 10, 2004. The appeal was received at the California Service Center on November 17, 2004.

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

It is noted that Form I-821, Application for Temporary Protected Status, filed on July 30, 2001, was denied on March 15, 2004, because the applicant was ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, due to his felony conviction. However, the record contains no evidence that the applicant appealed the director's decision to deny the TPS application.

It is further noted that the applicant was deported from the United States to El Salvador on September 27, 1988, based on his conviction of involuntary manslaughter. Additionally, the Federal Bureau of Investigation fingerprint results report shows that the applicant was placed in removal proceedings in McAllen, Texas, on February 5, 1999 (name used: [REDACTED] number [REDACTED]).

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

ORDER: The appeal is rejected.