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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: APR 28 2005
[SRC 03 226 53001]

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, Director
Administrative Appeals Office

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

The applicant is a native and citizen of El Salvador who is applying for 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 failed to establish his qualifying continuous residence in the United States during the requisite period.

In this case, the appeal form indicates that Mr. [REDACTED] Nashville, Tennessee, is the applicant's attorney or representative. Mr. [REDACTED] has not submitted any Form G-28, Notice of Entry of Appearance as Attorney or Representative, that verifies his authorization to represent the applicant and indicates his status as an attorney or an accredited representative, or that his organization is an accredited representative recognized by the Board of Immigration Appeals. The U.S. Department of Justice, Executive Office for Immigration Review, Recognition and Accreditation Roster does not list Mr. [REDACTED] Nashville, Tennessee, or his organization, as recognized accredited representatives. However, the applicant has signed the appeal form, and, therefore, will be considered as self-represented in his appeal.

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 December 2, 2003, 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 January 5, 2004. The appeal, however, was not properly received at the Texas Service Center until March 18, 2004.

It is noted that the evidence submitted on appeal would not have overcome the finding of the director. The director's decision noted that the applicant had established that he is the child of an alien currently eligible to be a TPS registrant and, therefore, qualified for late initial registration; however, the director determined that the applicant had not submitted any evidence that he had continuously resided in the United States during the requisite period. Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. On appeal, the applicant submits: receipt notices and fee receipt for his August 2003 TPS and employment authorization applications; another copy of his birth certificate, with English translation; his fingerprinting worksheet dated November 14, 2003; and, undated file copies of his mother's TPS and employment authorization applications. These documents do not establish the applicant's continuous residence or continuous physical presence in the United States for the required periods. The record does not contain any evidence as specified at 8 C.F.R. § 244.9(a)(2), indicating that the applicant entered the United States prior to February 13, 2001, or that he continuously resided in the United States since that date, and was continuously physically present in the United States since March 9, 2001.

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

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.