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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: AUG 22 2005
[WAC 01 173 54610]

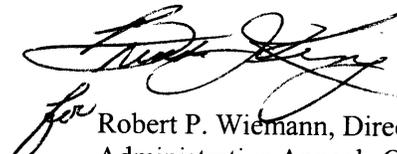
IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:
[REDACTED]

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.


for 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 on appeal. The appeal will be rejected.

The applicant claims to be a native and 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 director denied the application after determining that the applicant had been convicted of two or more misdemeanors committed in the United States.

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 August 24, 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 September 27, 2004. The appeal was received at the California Service Center on September 29, 2004.

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

It is noted that the applicant, on appeal, has not overcome the director's findings. Counsel submits the following court documents on appeal:

- (1) On September 27, 1999, in the Municipal Court of East Los Angeles Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date August 30, 1999), the applicant, under the name of [REDACTED] was convicted of theft of property, 484(a) PC, a misdemeanor. She was placed on probation for a period of 2 years, ordered to spend one day in jail, and pay \$100 in restitution fund.
- (2) On December 2, 1999, in the Municipal Court of East Los Angeles Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date November 30, 1999), the applicant, under the name of [REDACTED] was indicted for Count 1, burglary, 459 PC, a misdemeanor; Count 2, falsely representing self to an officer, 148.9(a) PC, a misdemeanor; and Count 3, theft of property, 484(a) PC, a misdemeanor. On December 2, 1999, the applicant was convicted of Counts 2 and 3. She was ordered to perform 10 days of "Cal Trans" as to Count 2; she was placed on probation for a period of 2 years, ordered to spend one day in jail, and pay \$100 in restitution fund as to Count 3. Count 1 was dismissed.

Counsel's assertion that the applicant's convictions should not be considered misdemeanors under 8 C.F.R. § 244.1 because she was sentenced to only one day in jail as to each arrest is without merit. Penal Code 484(a) and 148.9(a) are punishable by imprisonment of up to one year. 8 C.F.R. § 244.1 defines "misdemeanor" to mean a crime punishable for a term of one year or less, **regardless of the term such alien actually served**, if any.

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.