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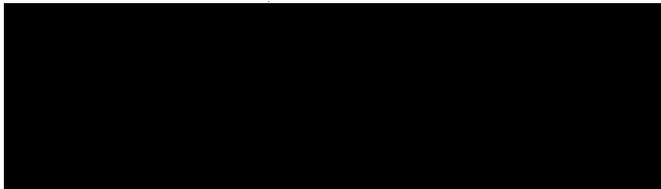
Office: CALIFORNIA SERVICE CENTER

Date:

[WAC 02 100 55841]

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:

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.

*Cindy N. Gomez*  
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 seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The record reflects the following offenses:

- (1) On May 16, 1994, the applicant was arrested in San Francisco, California, and charged with one count of attempted auto theft in violation of section 664/10851 VC, a felony, and one count of receiving stolen property in violation of section 496(a) PC, a felony. According to a San Francisco Police Department criminal history record contained in the record of proceeding, prosecution was declined and the applicant was released. (Court No. [REDACTED])
- (2) On November 30, 1995, the applicant was arrested in San Francisco, California, and charged with receiving stolen property in violation of section 496(a) PC, a felony, one count of possession of burglary tools in violation of section 466 PC, a misdemeanor, and one count of driving without a valid driver's license in violation of section 12500(a) VC, a misdemeanor. According to a San Francisco Police Department criminal history record contained in the record of proceeding, prosecution was declined on all charges, and the applicant was released. (Court No. [REDACTED])
- (3) On February 5, 1997, the applicant was arrested in San Francisco, California, and charged with one count of auto burglary in violation of section 459 PC, a felony, and giving false information to a peace officer in violation of section 31 VC, a misdemeanor. According to the San Francisco Police Department criminal history record contained in the record of proceeding, the applicant was placed in diversion, successfully completed the diversion program, and the charges were dismissed; however, the final court disposition of these charges has not been provided. (Court No. [REDACTED])
- (4) On March 8, 2001, the applicant was arrested in Redwood City, California, and charged with four counts of second-degree burglary in violation of section 460(b) PC, a felony; one count of attempting to commit a second-degree burglary in violation of section 664/460(b) PC, a felony; and one count of conspiracy to commit a crime in violation of section 182(a)(1) PC. On March 29, 2001, the applicant was convicted in the Superior Court Northern Branch, County of San Mateo, State of California, of two amended counts of burglary, second degree, in violation of section 460(b) PC, both misdemeanors. The other charges were dismissed. (Docket Number [REDACTED]) It is noted that the applicant was arrested on November 22, 2001, pursuant to a bench warrant issued by the court on September 27, 2001, for probation violation in connection with his two misdemeanor

convictions. The bench warrant was recalled on November 27, 2001, and the applicant's probation was reinstated. (Case Number [REDACTED])

- (5) On September 27, 2001, the applicant was arrested in San Francisco, California, and charged with one count of possession of burglary tools in violation of section 466 PC, a misdemeanor. On appeal, the applicant submits a minute order from the Superior Court of California, County of San Francisco, indicating that this charge was dismissed on February 28, 2001. (Agency Case Number [REDACTED])
- (6) On February 5, 2003, the applicant was convicted in the Superior Court of California, County of San Francisco, of driving under the influence of alcohol in violation of section 23152(a) VC, a misdemeanor. (Case Number [REDACTED])

It is noted that the applicant submits, on appeal, a Minute Order from the Superior Court of California, County of San Francisco, indicating that the following charges were dismissed on August 12, 2002: entering an inhabited dwelling with the intent to commit grand or petty larceny in violation of section 459 PC, a misdemeanor; possession of burglary tools in violation of section 466 PC, a misdemeanor; resisting a peace officer engaged in the performance of his duties in violation of section 148(a)(1) PC, a misdemeanor; and, battery on a peace officer engaged in the performance of his duties in violation of section 243(b) PC, a misdemeanor. (Court No. [REDACTED]) The record, however, contains no additional information relating to this arrest

The director denied the application because he found that the applicant had failed to submit requested evidence relating to his criminal record.

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 November 12, 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 December 15, 2003. The appeal was properly filed with correct fee with the California Service Center on March 11, 2004.

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

It is noted that the record contains an outstanding Form I-205, Warrant of Removal/Deportation, issued by the District Director, San Francisco, on September 24, 1999.

**ORDER:** The appeal is rejected.