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

M1

FILE: [REDACTED]
[WAC 01 289 54122]

OFFICE: CALIFORNIA SERVICE CENTER DATE MAY 05 2005

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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

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

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 record reveals the following offenses:

- (1) On July 22, 2002, the applicant was convicted in the Superior Court of California, County of Riverside, of one count of driving under the influence of alcohol in violation of section 23152(a) VC, a misdemeanor; one count of driving under the influence of alcohol with a blood alcohol content of 0.08% or greater in violation of section 23152(b) VC, a misdemeanor; and, one count of driving without a valid driver's license in violation of section 12500(a) VC, a misdemeanor. (Date of Arrest: June 10, 2002; Case Number [REDACTED])
- (2) On November 17, 2002, the applicant was arrested in Riverside, California, and charged with one count of possession of a narcotic controlled substance in violation of section 11350(a) HS, a felony. On December 13, 2002, the applicant pled guilty to this charge in the Superior Court of California, County of Riverside. He was placed in a diversion program. (Case Number [REDACTED])

The director denied the application because he found the applicant had been convicted of two or more misdemeanors.

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 March 18, 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 April 20, 2004. The appeal was received at the California Service Center on April 23, 2004.

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

ORDER: The appeal is rejected.