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

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: JUN 15 2005
[WAC 01 172 50280]

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 "R. Wiemann".

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 determined that the applicant was ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, because he was convicted of two misdemeanor offenses in California: (1) on December 27, 2001, inflicting corporal injury on a spouse, 473.5(a) PC, a misdemeanor; and (2) on September 27, 2002, theft of property, 484(a) PC, a misdemeanor. The director, therefore, denied the application.

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).

8 C.F.R. § 103.2(a)(7) states, in part:

An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and....shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable will not retain a filing date.

The director's decision of denial, dated March 4, 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 6, 2004. The director's decision and the Form I-290B, Notice of Appeal, are very clear in indicating that the appeal is not to be sent directly to the AAO, but, rather, to the "office which made the unfavorable decision." The applicant, nevertheless, sent his appeal to the AAO. The appeal is not considered properly received until it is received by the Service Center that rendered the unfavorable decision. It is noted that the Service Center subsequently returned the Form I-290B because the applicant had initially failed to sign the form. The appeal was properly received at the California Service Center on April 21, 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. Additionally, the crime of inflicting corporal injury on a spouse involves moral turpitude. *Grageda v. INS*, 12 F.3d 919 (9th Cir. 1993); *Matter of Phong Nguyen Tran*, 21 I&N Dec. 291 (BIA 1996). Likewise, the crime of theft, whether grand or petty, involves moral turpitude. *Matter of Scarpulla*, 15 I&N Dec. 139 (BIA 1974); *Morasch v. INS*, 363 F.2d 30 (9th Cir. 1966). Therefore, the applicant's misdemeanor convictions of crimes involving moral turpitude render him inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act

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.