



U.S. Citizenship
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FILE: [REDACTED]
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OFFICE: ST. PAUL (BLOOMINGTON)

DATE: 11/18/2009

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:



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 District Director, St. Paul, Minnesota, 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 seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The district director noted that the court record, furnished by the applicant, is unclear regarding the final results of his arrests. The district director, therefore, determined that the record did not contain sufficient evidence to show that the applicant was eligible for TPS and 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).

The district director's decision of denial, dated January 9, 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 February 11, 2004. The Form I-290B, Notice of Appeal, is 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 office that rendered the unfavorable decision. The appeal was properly received at the St. Paul district office on February 24, 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. The record reveals the following offenses:

- (1) The Federal Bureau of Investigation (FBI) fingerprint results report shows that on April 13, 1996, in Dade County, Florida, the applicant, under the name of [REDACTED], was arrested for driving under the influence. The record shows that on April 13, 1996 (Case No. [REDACTED] the County Court, Dade County, Florida, entered a *nolle prosequere* on the case.
- (2) The Dade County, Florida, police report shows that on November 28, 1997, the applicant, under the name of [REDACTED] was arrested for Count 1, no driver's license, FS 322.03 (capias or bench warrant, under Case No. [REDACTED]; and Count 2, theft, FS 812.012, under Case No. [REDACTED]. On November 29, 1997, the applicant entered a plea of guilty as to Count 2, adjudication of guilt was withheld, and sentence was suspended (name on the court record: [REDACTED]). Withholding of adjudication of guilt and suspension or execution of sentence is a conviction for immigration purposes. Section 101(a)(48)(A) of the Act.

The final disposition as to Count 1 (No. 2 above) is not contained in the record. Counsel submitted a statement from the Circuit and County Court of the Eleventh Judicial Circuit, Miami-Dade County, Florida, certifying that the court has no record under the name of [REDACTED] and that pursuant to Florida Rules of Court (Rule 2.075), retention of court records for misdemeanor cases is 5 years; therefore, the files are unavailable. Counsel also submitted statements from the Clerk of the Circuit and County Courts, Dade

County, Florida, indicating that no records were found for [REDACTED] and [REDACTED]. The destruction of court records, however, is not evidence that the applicant was not convicted of Count 1, or that the conviction was dismissed. Additionally, it is noted that the applicant was arrested under the name of [REDACTED]. There is no evidence that the court records were searched for this name.

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.