



U.S. Citizenship
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Services

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FILE: [REDACTED]
[LIN 00 186 51218]

OFFICE: CHICAGO

DATE: NOV 21 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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the District Director, Chicago, Illinois, and the case is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant is a native and citizen of Sierra Leone who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on May 30, 2000.

The district director subsequently withdrew the applicant's TPS on February 18, 2003, after determining that the applicant had failed to establish continuous residence and continuous physical presence in the United States since November 9, 1999. The district director noted that the applicant's date of entry into the United States was December 28, 1999.

The district director may withdraw the status of an alien granted TPS at any time if it is found that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1).

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 February 18, 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 March 24, 2003. The Form I-290B, Notice of Appeal, is very clear in indicating that the appeal is to be sent directly to the "office which made the unfavorable decision." It is also noted that the appeal was originally received at the Chicago district office on April 3, 2003. The applicant was advised to send the appeal to the Nebraska Service Center. The Service Center returned the appeal to the applicant on June 10, 2003, and she was advised to send the appeal directly to the Chicago Field Office where the final decision was rendered. 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 Chicago Field Office on July 29, 2003.

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 district director's findings. Persons applying for TPS offered to Sierra Leone must demonstrate that they have continuously resided in the United States since November 9, 1999, and have been continuously physically present since November 9, 1999. The applicant's passport and Form I-94, Departure Record, shows that the applicant was admitted into the United States as a B-2 nonimmigrant visitor on December 28, 1999. The applicant was not present in the United States during the period required to establish continuous residence and continuous physical presence as required by 8 C.F.R. 244.2(b) and (c).

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.