



U.S. Citizenship
and Immigration
Services

PUBLIC COPY
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

M1



FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: JUL 16 2007
[WAC 05 210 80393]

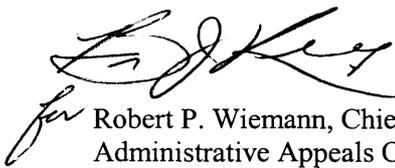
IN RE: Applicant: [REDACTED]

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.


for Robert P. Wiemann, Chief
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 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 denied the application because the applicant had failed to submit sufficient evidence to establish: (1) that he was eligible for late registration; (2) his nationality and identity; and (3) that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present since March 9, 2001.

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 denial decision dated August 2, 2006, 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 September 4, 2006. The applicant subsequently filed Form I-290B, Notice of Appeal to the Administrative Appeals Office. The appeal was returned to the applicant and he was advised that the appeal cannot be accepted because he had failed to sign the form and that the proper fee was not attached. He was further advised that since the case was not properly filed, a priority or processing date cannot be assigned. The appeal was properly received at the California Service Center on October 3, 2006.

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. While the applicant furnished additional evidence to establish continuous residence and continuous physical presence during the qualifying periods, he has not furnished any evidence to establish his nationality and identity, and to establish that he was eligible for late registration described in 8 C.F.R. § 244.2(f)(2).

It is further noted that on January 30, 1995, the applicant filed Form I-589, Request for Asylum in the United States. In removal proceedings held on May 30, 1995, in San Diego, California, the applicant failed to appear; therefore, the Immigration Judge determined that the applicant had abandoned any and all claims for relief from removal and ordered the applicant removed to El Salvador. A Form I-205, Warrant of Deportation, was issued on July 13, 1995.

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.