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U.S. Citizenship
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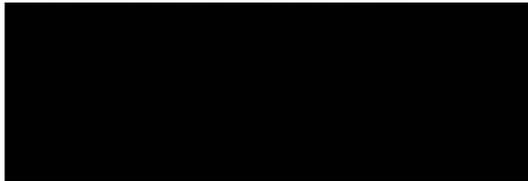


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **AUG 05 2008**
[EAC 08 059 51286, appeal]
[EAC 06 362 84464]

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center denied the application. The matter 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 director denied the application because the applicant was convicted of two misdemeanors committed in the United States.

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 regulations at 8 C.F.R. § 103.2(a)(7) state, 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 was dated November 5, 2007. Coupled with three days for mailing, the **appeal** should have been filed on or before December 10, 2007. The appeal was not received at the Vermont Service Center until December 21, 2007.

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

It is noted that in removal proceedings held "in absentia" on February 27, 2007, an Immigration Judge in Los Angeles, California, ordered the applicant deported to El Salvador.

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.