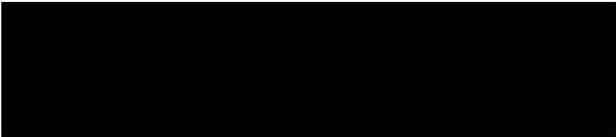


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**U.S. Citizenship  
and Immigration  
Services**

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FILE: [REDACTED]  
[WAC 05 225 93484]

Office: CALIFORNIA SERVICE CENTER

Date: JAN 11 2008

INRE: 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 office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 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 record reveals that the applicant filed a TPS application during the initial registration period under CIS receipt number WAC0124358611. The director denied that application due to abandonment on March 1, 2004. As the application was denied due to abandonment there was no appeal rights; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed the current TPS application on May 18, 2005, and indicated that she was re-registering for TPS.

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

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 regulation at 8 C.F.R. § 103.3(a)(2) states an appeal must be accompanied by a nonrefundable fee as set forth in 8 C.F.R. § 103.7. An application, which is submitted with the wrong filing fee, shall be rejected as improperly filed. 8 C.F.R. § 103.2(a)(7)(i). As of September 28, 2005, the fee for filing an appeal is \$385.00. *See* 8 C.F.R. § 103.7(b)(3).

The director's decision of denial is dated September 16, 2005. 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 October 19, 2005. The applicant submitted an appeal dated October 22, 2005, which was received at California Service Center on November 1, 2005, along with an incorrect fee of \$110.00 for the appeal. The appeal with the correct filing fee was received at the California Service Center on September 1, 2006, over eleven months after the decision was issued.

Assuming, *arguendo*, the appeal was received with the correct filing fee on November 1, 2005, the appeal would still be untimely filed as it was received 46 days after the decision was issued.

While the AAO notes that the instructions in the director's decision identified the proper filing fee for the appeal as \$110.00, this decision was dated and mailed 13 days before the effective date of the filing fee change to \$385.00. Moreover, as the fee change properly appeared in the Federal Register in accordance with law, the applicant was charged with notice of the appropriate fee change. *See* 70 Fed. Reg. 50954-50957 (Aug. 29, 2005).

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act.

As the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

Finally, the record reflects that a Form 1-862, Notice to Appear was issued on November 30, 2005. A master hearing was scheduled before the immigration court on August 16, 2007.

**ORDER:** The appeal is rejected.