



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE:

FEB 19 2013

Office: VERMONT SERVICE CENTER

FILE: [Redacted]

IN RE:

Applicant: [Redacted]

APPLICATION:

Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254a

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for Temporary Protected Status was denied by the Director, Vermont Service Center. The matter 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 director denied the application because the applicant failed to establish that she was eligible for late registration. The director also denied the application because the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must submit the complete appeal within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

Counsel indicates at Part 2 of the Form I-290B, Notice of Appeal or Motion, that he is appealing the Form I-821, Application for Temporary Protected Status, under the receipt number [REDACTED] from the denial notice dated March 2, 2012. U.S. Citizenship and Immigration Services records, however, indicate that the Form I-821 was denied on September 22, 2011.

It is noted that a denial notice was issued on March 2, 2012 for a Form I-765, Application for Employment Authorization. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen or a motion to reconsider.

As the Form I-290B does not indicate that the applicant is filing a motion, the AAO shall treat the Form I-290B as an appeal relating to the Form I-821. For each adverse decision, an applicant must submit a separate Form I-290B and associated fee. *See* 8 C.F.R. § 103.3(a)(1). The applicant bears the burden of completing the Form I-290B accurately and according to its instructions. *See* 8 C.F.R. § 103.2(a)(1).

The record indicates that the director issued the Notice of Decision on September 22, 2011, and it was mailed to the applicant and counsel at their addresses of record. The envelope containing the Form I-290B was shipped via Federal Express on March 28, 2012, and it was received at the Phoenix Lockbox on March 29, 2012; 189 days after the decision was issued. Accordingly, the appeal was untimely filed.

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. The

official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Director, Vermont Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii).

The matter will therefore be returned to the director. If the director determines that the late appeal meets the requirements of a motion, the motion shall be granted and a new decision will be issued.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.