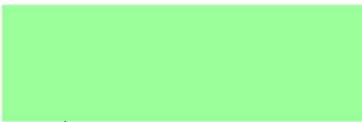




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE:

FEB 26 2013

Office: VERMONT SERVICE CENTER

FILE:

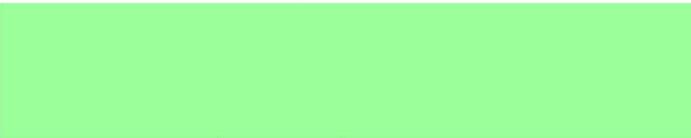
IN RE:

Applicant:

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:

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

(b)(6)

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office 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 it was determined that the applicant had been convicted of a felony in the United States.

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).

The record indicates that the director issued the Notice of Decision on October 17, 2006, and it was mailed to the applicant and his counsel at the time at their addresses of record. The appeal¹ was received at the Phoenix Lockbox on August 9, 2012, over five years 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.

¹ The brief that was submitted in support of the Notice of Appeal or Motion (Form I-290B) indicates that it is being submitted in support of the applicant's motion to reopen. We note, however, that the applicant through counsel clearly indicated on the Form I-290B at Part 2.A that he was filing an appeal, not a motion. Had the applicant wanted U.S. Citizenship and Immigration Services to consider the Form I-290B as a motion to reopen and not an appeal, the applicant should have so indicated at Part 2.D of the Form I-290B. 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).