



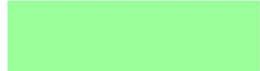
U.S. Citizenship
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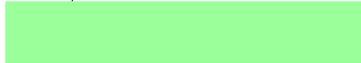


DATE: **JAN 30 2013**

Office: VERMONT SERVICE CENTER



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: Self-represented

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

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 is a native and citizen of Honduras who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254. The director withdrew the applicant's TPS because he had failed to submit requested court documentation relating to his criminal record.

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. An application, which is submitted with the wrong filing fee, shall be rejected as improperly filed. *See* 8 C.F.R. § 103.2(a)(7)(i).

The regulation at 8 C.F.R. § 103.2(a)(1) provides, in part, that "[e]very benefit request ... must be executed and filed in accordance with the form instructions, ... and such instructions are incorporated into the regulations requiring its submission." The instructions at Part 4 on the Form I-290B, Notice of Appeal or Motion, specifically require a signature of this form when the decision is appealed.

The record indicates that the director issued the Notice of Decision on April 24, 2012, and it was mailed to the applicant at his address of record. The Form I-290B was received on May 25, 2012; however, it was rejected as improperly filed as it was not signed and the proper fee was not included. The Form I-290B was returned to the applicant on June 7, 2012, with instructions to sign the form and to submit the correct fee. The envelope containing the signed Form I-290B was postmarked June 29, 2012, and was received at the Phoenix Lock Box on July 3, 2012, 70 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.