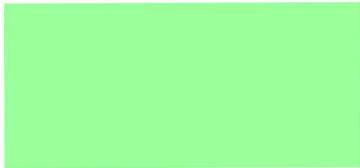




U.S. Citizenship  
and Immigration  
Services

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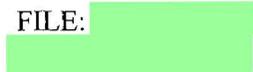


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**JUN 03 2013**

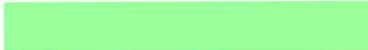
Office: VERMONT SERVICE CENTER

FILE:



IN RE:

Applicant:



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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont 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 director denied the application because the applicant 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).

The regulation at 8 C.F.R. § 103.2(a)(1) provides, in part, “[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 September 11, 2012, and it was mailed to the applicant and counsel at their addresses of record. The Form I-290B was received on October 10, 2012; however, it was rejected as improperly filed as it was not signed. The Form I-290B was returned to counsel on October 15, 2012. The Form I-290B with signature was received at the Phoenix Lockbox on October 23, 2012, 42 days after the decision was issued. Accordingly, the appeal was untimely filed.

Subsequent to the filing of the Form I-290B, counsel asserts, “[o]n October 21, 2012 we responded to an action from USCIS where it was claimed that a page was missing. We provided the missing page as requested, but this was NOT a new filing date.”

However, there is nothing in the record to support counsel’s assertion. The Form I-797C, Notice of Action, clearly advised the applicant that the appeal form was returned because it was not signed.

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 director determined that the late appeal did not meet the requirements of a motion and forwarded the matter to the AAO.

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

Assuming, arguendo, a Form I-290B was properly filed on October 10, 2012, the appeal would be summarily dismissed as the basis for the denial of the TPS application was not addressed and no evidence was provided to overcome the director's findings. The applicant through counsel indicated at Part 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.<sup>1</sup> No brief and/or additional evidence was submitted.

**ORDER:** The appeal is rejected.

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<sup>1</sup> The Form I-290B instructs the applicant to submit a brief and additional evidence to the AAO within 30 days of filing the appeal.