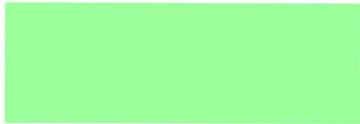




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 06 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. § 1254

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

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

Thank you,

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

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 El Salvador who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

On July 9, 2012, the director withdrew the applicant's TPS because he had failed to submit requested court documentation relating to his arrest and subsequent charge on June 15, 2011, by the Drug and Enforcement Administration for cocaine and dangerous drugs.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

(B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

The regulation at 8 C.F.R. § 103.3(a)(2)(v) states:

Improperly filed appeal – (A) Appeal filed by person or entity not entitled to file it – (1) Rejection without refund of filing fee. An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

In accordance with the U.S. Citizenship and Immigration Services regulation at 8 C.F.R. § 292.4(a) as well as the instructions to the Form I-290B, Notice of Appeal or Motion, a new Form G-28, Notice of Entry of Appearance as Attorney or Representative, must be filed with an appeal filed with the AAO. This regulation applies to all appeals filed on or after March 4, 2010. *See* 75 Fed. Reg. 5225 (February 2, 2010).

The Form I-290B is signed by [REDACTED] who claims to be representing the applicant on appeal. The Form I-290B was filed on August 15, 2012, without the required new Form G-28. It is noted that the Form G-28 submitted is dated May 5, 2012.¹

Pursuant to 8 C.F.R. § 292.4(a), the AAO sought to clarify whether [REDACTED] is authorized to represent the applicant in this proceeding. On May 9, 2012, a facsimile was sent to counsel's office requesting that a new properly executed Form G-28 be sent to the AAO by mail or fax within fifteen (15) calendar days. To date, the requested Form G-28 has not been submitted to the AAO. As such, Mr. [REDACTED] has no standing in this proceeding. 8 C.F.R. § 103.3(a)(1)(iii)(B). As the appeal

¹ Counsel had submitted a photocopy of this Form G-28 and correspondence which was received on May 29, 2012 at the Vermont Service Center.

was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1). The applicant shall be considered as self-represented and the decision will be furnished to the applicant at his address of record.

Assuming, arguendo, the required new Form G-28 has been submitted, the appeal would still be rejected as it was untimely filed. The director issued the Notice of Decision on July 9, 2012, and the appeal was received on August 15, 2012, 36 days after the decision was issued.

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 burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the appeal was not properly filed.

ORDER: The appeal is rejected.