



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: SEP 06 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. § 1254a

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center.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 filed a Form I-290B, Notice of Appeal or Motion, and indicated at Part 2 that he was filing an appeal from the denial of the Form I-821, Application for Temporary Protected Status, under receipt number [REDACTED] dated June 20, 2012. This receipt number, however, relates to a Form I-765, Application for Employment Authorization. U.S. Citizenship and Immigration Services records reflect that the only notice issued on June 20, 2012 for a Form I-821 relates to receipt number [REDACTED] which withdrew TPS. Accordingly, the AAO shall treat the Form I-290B as an appeal relating to the Form I-821 under receipt number [REDACTED].

The applicant is a native and citizen of El Salvador who was granted 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. See 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued the Notice of Decision on June 20, 2012, and it was mailed to the applicant at his address of record. The envelope containing the Form I-290B was postmarked November 6, 2012 and it was received at the Vermont Service Center on November 10, 2012, 143 days after the decision was issued. Accordingly, the appeal was untimely filed.

It is noted that if the applicant was appealing the notice under receipt number [REDACTED], the appeal would still be rejected as the AAO has no jurisdiction over applications for employment authorization.

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.

ORDER: The appeal is rejected.