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FILE: [REDACTED]
[EAC 02 048 51032]

OFFICE: VERMONT SERVICE CENTER

DATE: NOV 16 2007

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC). A subsequent appeal and a motion to reopen were dismissed by the Director, Administrative Appeals Office (AAO). Another motion to reopen was dismissed by the Director, VSC. The matter is now before the AAO on appeal. The appeal will be rejected.

The applicant is 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 record of proceedings shows that the applicant submitted his TPS application on November 27, 2001. The Director, VSC denied the application on April 11, 2003, because the applicant failed to provide sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the requisite time periods.

The applicant filed an appeal, which the AAO dismissed on April 13, 2004, after also concluding that the applicant had not submitted sufficient evidence to establish continuous residence and continuous physical presence. On June 14, 2004, the applicant filed a motion to reopen. The AAO dismissed the motion to reopen on November 29, 2006, because the issues on which the underlying decisions were based had not been overcome on motion.

The applicant filed an appeal from the AAO's decision on June 14, 2006. The Director, VSC rejected the applicant's appeal because it had been untimely filed. The director treated the appeal as a motion to reopen instead, and denied the application on September 7, 2006, because the requirements for a motion to reopen had not been met.

An appeal that is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee accepted will not be refunded. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

The director's decision of denial is dated September 7, 2006. Any appeal must be properly filed within thirty days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). Coupled with three days for mailing, the appeal, in this case, should have been filed on or before October 10, 2006. The appeal was received at the Vermont Service Center on October 18, 2006.

An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act.

Based upon the applicant's failure to file a timely appeal, the appeal will be rejected.

ORDER: The appeal is rejected.