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U.S. Department of Homeland Security
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Washington, DC 20536



**U.S. Citizenship
and Immigration
Services**



FILE:



Office: VERMONT SERVICE CENTER

Date:

APR 08 2004

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:

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, Director
Administrative Appeals Office

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

The applicant is a native and citizen of El Salvador who indicated on her application that she entered the United States without a lawful admission or parole in December 2000. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish she had continuously resided in the United States since February 13, 2001.

The appeal from the director's decision was dismissed on April 16, 2003, after the Director of the AAO also concluded that the applicant had failed to establish her eligibility for TPS. On motion to reopen, the applicant reasserted her claim of eligibility for TPS.

Although a Notice of Entry of Appearance as Attorney or Representative (Form G-28) has been submitted, it does not appear that "Don Manuel" Immigration Consultants, is authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. All representations will be considered, but the decision will be furnished only to the applicant.

A motion to reopen or reconsider must be filed within thirty days of the underlying decision, except that failure to file during this period may be excused at the Service's discretion when the applicant has demonstrated that the delay was reasonable and beyond the control of the applicant. 8 C.F.R. § 103.5(a)(1)(i).

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 decision, dated April 16, 2003, clearly advised the applicant that any motion to reopen must be filed within thirty days. Coupled with three days for mailing, the motion, in this case, should have been filed on or before May 19, 2003. The record reveals that the applicant's initial submission of her motion to reopen was rejected because the applicant did not sign the appeal. Subsequently, the applicant signed and resubmitted her motion to reopen, which was received on June 5, 2003.

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 motion to reopen was not filed within the allotted time period. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO dated April 16, 2003, is affirmed.