

identifying data deleted to
prevent clearly unwarranted
disclosure of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

MM



FILE: [REDACTED]
[EAC 02 170 50980]

OFFICE: VERMONT SERVICE CENTER

DATE: NOV 10 2009

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 (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen will be dismissed.

The applicant is a native and 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 on May 1, 2003, because the applicant had failed to submit sufficient evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The applicant filed an appeal with the AAO on June 11, 2003.

The appeal from the director's decision was dismissed on June 30, 2004, after the Director of the AAO concluded that the applicant had failed to file a timely appeal within 33 days of the initial denial. On Motion to Reopen, the applicant states that he timely filed his appeal and reasserts his claim of eligibility for TPS. It is noted that the applicant filed his Motion to Reopen on August 16, 2004, which is also beyond the 33 days requirement.

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 previous decision from the director, Vermont Service Center, dated May 1, 2003, clearly advised the applicant that any appeal must be filed within thirty days. Coupled with three days for mailing, the appeal, in this case, should have been filed on or before June 3, 2003. The appeal was not received until June 11, 2003.

Although the applicant asserts that he filed his appeal timely, there is no evidence in the record to substantiate this claim. The record of proceedings does contain affidavits, letters, and rent receipts submitted by the applicant on appeal, however, the record shows that they, along with the I-290B, were received by the Vermont Service Center on June 11, 2003. The applicant has not submitted on motion, nor does the record of proceedings contain information and/or documentation to demonstrate that the applicant filed his appeal within the requisite time period. The director, AAO, correctly determined that the appeal was untimely filed and rejected the appeal on June 30, 2004.

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 previous decision from the AAO is dated June 30, 2004. Coupled with three days for mailing, the motion in this case, should have been filed on or before August 2, 2004. The motion to reopen was received on August 16, 2004.

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 June 30, 2004, is affirmed.