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U.S. Citizenship
and Immigration
Services

MM

FILE:

[EAC 02 263 50429]

Office: VERMONT SERVICE CENTER

Date: SEP 06 2005

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

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 motion to reopen will be dismissed.

The applicant claims to be 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 because the applicant failed to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

The appeal from the director's decision was dismissed on April 27, 2004, after the Director of the AAO also concluded that the applicant had failed to establish his eligibility for TPS.

On motion to reopen, the applicant reasserts his claim of eligibility for TPS. He states that he does not have additional proof of his residence because his young age and his lack of legal status made it difficult to obtain a license, bank account, or other evidence. The applicant does not submit any additional evidence in support of the motion.

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 was dated April 27, 2004. Pursuant to the regulations noted above, 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 June 1, 2004. The motion to reopen, however, was not received until June 14, 2004.

On motion, the applicant also asserts that letters have been sent to his previous address despite his having informed Citizenship and Immigration Services (CIS) of his new address. Review of the record confirms that the AAO decision was correctly issued to the address as given on the Form I-290B, Notice of Appeal, dated May 30, 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. 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 27, 2004, is affirmed.