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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
[EAC 03 127 52681]

Office: VERMONT SERVICE CENTER

Date: **FEB 21 2006**

IN RE:

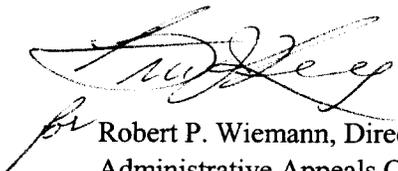
Applicant: [REDACTED]

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.


for 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 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 because the applicant failed to establish he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

The appeal from the director's decision was dismissed on January 4, 2005, after the Director of the AAO had summarily dismissed the appeal because the applicant did not provide any supporting documentary evidence or brief along with his submission. Further, the director determined that the applicant did not identify specifically any erroneous conclusion of law or statement of fact in this proceeding. On motion to reopen, the applicant requests that his case be reopened.

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 January 4, 2005. Coupled with three days for mailing, the motion, in this case, should have been filed on or before February 6, 2005. The motion to reopen was received at the Vermont Service Center on April 6, 2005.

Based upon the applicant's failure to file a timely motion, the motion will be dismissed.

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 January 4, 2005, is affirmed.