



U.S. Citizenship
and Immigration
Services

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invasion of personal privacy
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[REDACTED]

FILE:

[REDACTED]

OFFICE: TEXAS SERVICE CENTER

DATE: JUL 25 2006

[SRC 04 014 53811]

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, Texas Service Center. A subsequent appeal was dismissed by the Director (now Chief), 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 because the applicant failed to establish his eligibility for late initial registration. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial TPS application with Citizenship and Immigration Services (CIS), on October 20, 2003.

The appeal from the director's decision was rejected on June 24, 2005, after the Director of the AAO determined that the appeal had been untimely filed and 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 explains that his initial appeal was untimely because he could not find anyone qualified to help him properly file the forms within the specified timeframe. In support of the motion, he resubmits evidence that had previously been entered into the record. He also submits additional evidence relating to his continuous residence and continuous physical presence in the United States, consisting of CIS receipt notices and statements from acquaintances attesting to his residence and good moral character.

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 June 24, 2005. Any motion to reopen must have been filed within thirty days after service of the decision. 8 C.F.R. § 103.5(a)(1)(i). Coupled with three days for mailing, the motion, in this case, should have been filed on or before July 27, 2005. The motion to reopen, however, was not properly received at the Texas Service Center until August 11, 2005. 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.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO dated June 24, 2005, is affirmed.