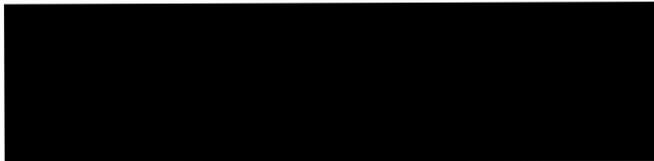


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FILE:

OFFICE: VERMONT SERVICE CENTER

DATE: JUL 28 2006

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IN RE:

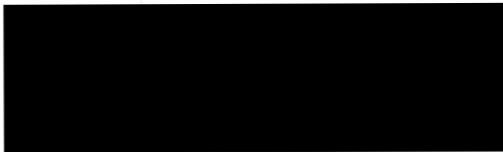
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Director (now Chief) of the 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 August 8, 2002, because the applicant failed to establish continuous residence in the United States since February 13, 2001.

The applicant's appeal from the director's decision was dismissed on April 15, 2003, 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 and submits additional evidence in support of his claim.

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 15, 2003. 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 May 19, 2003. The motion to reopen was received at the Vermont Service Center on February 7, 2005, more than a year after the issuance of the AAO decision.

It is noted that the applicant, on motion, claims that he never received the request for additional evidence dated February 20, 2002. That statement is incorrect. The applicant responded to the request for additional evidence; his response was received at the Vermont Service Center on May 4, 2002.

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 15, 2003, is affirmed.