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**U.S. Citizenship
and Immigration
Services**

MM

FILE:

[EAC 03 214 53671]

Office: VERMONT SERVICE CENTER

Date: **NOV 02 2006**

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC). A subsequent appeal was dismissed by 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 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 respond to a request for evidence to establish his eligibility for late registration, and his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. Both the request for evidence and the notice of denial were mailed to the applicant at his address of record, and neither was returned as undeliverable.

The applicant filed an appeal from the director's decision on March 12, 2004. That appeal was dismissed on August 2, 2005, after the AAO also concluded that the applicant had failed to establish his eligibility for TPS.

The applicant filed the current motion to reopen on October 25, 2005. On motion to reopen, counsel for the applicant asserts that the applicant never received the request for evidence to establish his eligibility for TPS. In support of the motion, counsel submits a statement from the applicant and additional documentation.

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, dated August 2, 2005, advised the applicant that 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 September 5, 2005. The motion to reopen was received on October 24, 2005.

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 August 2, 2005, is affirmed.