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

M1

FILE:

[WAC 01 245 51093]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: **OCT 31 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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Director, 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 February 17, 2004, because the applicant failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The Director (now Chief) of the AAO dismissed the applicant's appeal from the denial decision on December 14, 2004, because he found the applicant had not overcome the grounds for denial of the application.

On motion to reopen, counsel for the applicant states that the applicant discovered additional documentation relating to his residence and physical presence in the United States during the requisite periods in March 2005 during the process of moving to a new residence. Counsel submits additional evidence in an attempt to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

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 December 14, 2004. 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 January 17, 2005. The motion to reopen was not received at the California Service Center until May 27, 2005.

Based upon the applicant's failure to file a timely motion to reopen or reconsider, the motion will be rejected.

It is noted that the evidence submitted on motion includes a notice from the Marin County Superior Court, Traffic Division, San Rafael, California, indicating that the applicant was arrested on October 22, 2001, and charged with driving without a valid driver's license in violation of section 12500(a) VC, a misdemeanor. (Citation Number [REDACTED]) This previously undisclosed offense must be addressed in any future proceeding before Citizenship and Immigration Services (CIS).

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 December 14, 2004, is affirmed.