U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 05 2006
[EAC 02 112 51245]

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:

[redacted]

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The Director (now Chief) of the Administrative Appeals Office (AAO) dismissed an appeal from the denial decision. The service center director subsequently dismissed the applicant's motion to reopen the case, and the matter is now before the AAO on a second motion to reopen. The motion 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 service center director initially denied the application on March 24, 2003, 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 of the AAO dismissed a subsequent appeal from the denial decision on July 1, 2004, finding that the applicant had not submitted sufficient evidence to overcome the grounds for denial of the application.

On September 15, 2004, more than two months after the issuance of the AAO decision, the applicant filed a motion to reopen the matter.

The service center director erroneously dismissed the motion on November 9, 2004, stating that there is no provision in the regulations for a motion to reopen or reconsider an appeal dismissal by the AAO. The applicant has the right to file a motion to reopen the AAO decision. However, the motion was not timely filed. As stated above, the motion was filed **more than two months** after the issuance of the AAO decision dismissing the applicant's appeal. Since the motion was not timely filed, the director's decision will not be disturbed.

On March 5, 2005, **more than four months** after the dismissal of the applicant's first motion to reopen, counsel for the applicant filed a second motion to reopen the case. On motion, counsel submits a statement and additional evidence.

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 dismissing the applicant's first motion to reopen was dated November 9, 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 December 13, 2004. The current motion to reopen was not received until March 4, 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 service center director will not be disturbed.

ORDER: The motion to reopen is dismissed. The previous decision of the service center director dated November 9, 2004, is affirmed.