

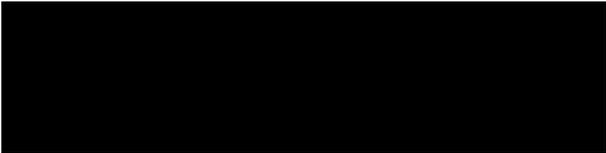


U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **SEP 26 2006**
[WAC 02 173 53066]

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, 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 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 originally denied the application on February 5, 2003, because the evidence furnished by the applicant in response to a request for additional evidence, was insufficient to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 19, 2001, to the date of filing the application.

The applicant appealed the director's decision on March 5, 2003. The AAO reviewed the record of proceeding, including evidence furnished on appeal. The AAO listed the evidence furnished and concluded that the applicant had not submitted any evidence to establish her qualifying residence and physical presence in the United States during the period from January 5, 2001 to June 9, 2001. The AAO, therefore, affirmed the director's decision and dismissed the appeal on October 16, 2003.

A motion to reopen or reconsider was filed by the applicant on March 9, 2005. The director dismissed the motion on May 10, 2005, because the motion was not filed within 30 days of the denial decision.

The applicant again filed a motion to reopen or reconsider on March 15, 2006, and reasserts her claim of eligibility for TPS. She resubmits evidence previously furnished and contained in the record.

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 or her 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 record in this case shows that the AAO issued a decision dated October 16, 2003. Coupled with three days for mailing, the motion, in this case, should have been filed on or before November 18, 2003. The first motion to reopen was received on March 9, 2005, and the second motion was received on March 15, 2006. The applicant neither addressed nor submitted any evidence to demonstrate that the delay was reasonable and was beyond her control.

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 will be dismissed and the previous decision of the AAO will be affirmed.

ORDER: The motion is dismissed. The previous decision of the AAO dated October 16, 2003, is affirmed.