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



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **AUG 02 2007**

[EAC 01 201 51463 – I-821]

[EAC 05 242 50144 – Motion]

IN RE:

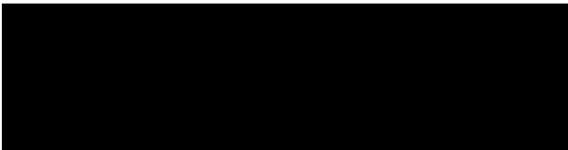
Applicant:



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 Chief, Administrative Appeals Office (AAO). The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion to reopen will be dismissed.

The applicant claims to be a 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 submit requested court documentation relating to his criminal record.

The appeal from the director's decision was dismissed on June 29, 2005, after the Chief of the AAO also concluded that the applicant had failed to establish his eligibility for TPS. On motion to reopen, counsel for the asserts that the applicant has already submitted the necessary evidence to establish his claim of eligibility for TPS and provides a photocopy of the applicant's El Salvadoran birth certificate, with English translation.

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 June 29, 2005. Coupled with three days for mailing, the motion, in this case, should have been filed on or before August 2, 2005. The motion to reopen was received on September 1, 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 June 29, 2005, is affirmed.