



U.S. Citizenship
and Immigration
Services

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JUL 13 2007

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date:

[LIN 02 047 51149]

[MSC 05 223 11671 – Motion]

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 Nebraska Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The instant application was denied by the Director, Nebraska Service Center (NSC). 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 NSC director denied the application on December 9, 2002, because the applicant failed to establish her qualifying continuous residence in the United States.

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 decision from the NSC director, dated December 9, 2002, clearly advised the applicant that any motion must be filed within thirty days. Coupled with three days for mailing, the motion, in this case, should have been filed on or before January 13, 2003. The motion was received by the Nebraska Service Center on April 25, 2005, over two years later. Further, counsel did not demonstrate that the delay in filing a motion was reasonable or beyond the control of the applicant.

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 NSC director dated December 9, 2002, is affirmed.