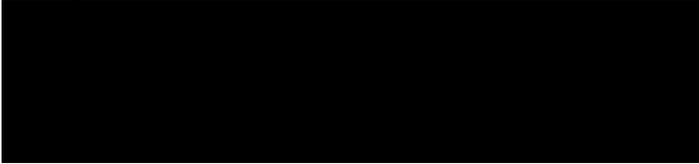




U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **M 30 2007**  
[SRC 01 149 59797]

IN RE: Applicant: [REDACTED]

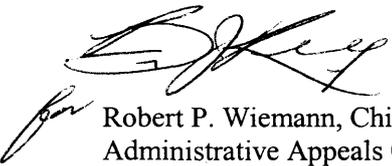
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration  
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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

The applicant claims to be 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 record indicates that the applicant filed a TPS application during the initial registration period on March 26, 2001, under receipt number SRC 01 149 59797. The Director, Texas Service Center (TSC), denied that application due to abandonment on July 27, 2002, because the applicant had failed to respond to a request for additional evidence.<sup>1</sup> The applicant did not file a motion to reopen during the requisite timeframe. The applicant filed a subsequent TPS application on January 13, 2003, under receipt number SRC 03 072 53795. The TSC director denied that application on July 9, 2003, because the applicant had failed to establish his eligibility for late registration. The applicant did not file an appeal during the requisite timeframe. The applicant filed the current TPS application on March 1, 2005 [WAC 05 152 70963] and indicated that he was re-registering for TPS. The CSC director denied the application on August 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. The applicant appealed the director's decision to the AAO on September 16, 2005. The AAO reviewed the record of proceeding and noted that the applicant did not file a motion to reopen the denial of the initial TPS application [SRC 01 149 59797], and he also did not appeal the CSC director's denial of the second TPS application [SRC 03 072 53795]. Because the applicant had not previously been granted TPS, the CSC director determined that the applicant was not eligible to re-register for TPS; therefore, the AAO affirmed the CSC director's decision and dismissed the appeal on June 29, 2006.

During the pendency of the applicant's appeal from the CSC director's denial of the re-registration application [WAC 05 152 70963] to the AAO on September 16, 2005, counsel filed a motion to reopen the initial TPS application [filed on March 26, 2001, under SRC 01 149 59797] more than three years later, on September 19, 2005. Counsel asserts that the person who prepared the applicant's TPS application never told the applicant of any problem or that his application had been denied, and that the applicant is not familiar with the English language or with the intricacies of the immigration law.

A remand of this case to the TSC director, because the denial of the initial TPS application was based on abandonment, would not overcome the denial of the application because the record as presently constituted indicates that the applicant had failed to overcome the TSC director's reasons for the denial of the initial application.

Pursuant to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be proved at the reopened proceedings and be supported by affidavits or other documentary evidence. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). A review of the record reveals that the applicant has presented no new facts or other documentary evidence in support of the motion to reopen. While the applicant furnished additional evidence of his residence and physical presence in the United States, he

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<sup>1</sup> The applicant was requested to submit: (1) evidence of his nationality and identity, such as, "photo identification, birth certificate and/or any national identity document for his country of origin bearing photo and/or fingerprint such as a photocopy of the Biographic pages of your passport, national identification card etc." The applicant was advised that although he had submitted a copy of a baptismal certificate, it was translated on a birth certificate form; (2) evidence to show that he had resided in the United States since February 13, 2001; and (3) evidence to show that he had been continuously physically present from March 9, 2001, to the date of filing the application.

failed to submit a copy of his birth certificate and/or a national identity document or a copy of his passport to establish his nationality and identity as required by 8 C.F.R. § 244.9(a)(1). Furthermore, counsel's assertions on motion are not persuasive. The AAO is bound by the clear language of the statute and lacks the authority to change the statute. Further, there is no provision to waive the registration or application requirements based on the applicant's assertion that he lacks knowledge of the immigration laws.

Furthermore, pursuant to 8 C.F.R. 103.5(a)(1)(i), any motion to reopen a proceeding before the Service [now, Citizenship and Immigration Services (CIS)], filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of CIS where it is demonstrated that the delay was reasonable and was beyond the control of the applicant.

The applicant, in this case, had 30 days from July 27, 2002, in which to file a motion to reopen or a motion to reconsider. This motion was received at the California Service Center approximately three years later, on September 19, 2005. The applicant has not demonstrated that the delay was reasonable and was beyond his control.

Accordingly, the motion will be dismissed, and the previous decision of the TSC director will be affirmed.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The motion is dismissed. The decision of the TSC director dated July 27, 2002, is affirmed.