



U.S. Citizenship
and Immigration
Services

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FILE:

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Office: VERMONT SERVICE CENTER

Date:

[EAC 01 198 51438]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

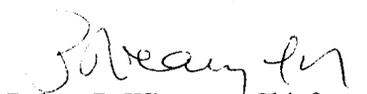
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 Nebraska Service Center. 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 from that decision was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen will be rejected.

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 VSC director denied the application on February 25, 2004, because the applicant had been convicted of a felony committed in the United States, and therefore the applicant was ineligible for TPS. The applicant filed an appeal which was dismissed by the Director, now Chief, of the AAO on July 1, 2005.

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).

A motion to reopen the decision of the AAO Director must be filed within thirty days. Coupled with three days for mailing, the motion, in this case, should have been filed on or before August 3, 2005. The motion was received by the Vermont Service Center on August 12, 2005. Further, the applicant 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 rejected. The previous decision of the AAO director dated July 1, 2005, is affirmed.