



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: Texas Service Center Date: **MAY 10 2007**
[SRC 01 200 55296]

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied, reopened, and denied again, by the Director, Texas Service Center (TSC). The matter is now before the AAO on a second 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 TSC director denied the application on March 4, 2003, due to abandonment because the applicant failed to respond to a request for evidence in order to establish her eligibility for TPS. On February 2, 2004, the applicant filed a motion to reopen with the TSC director which was dismissed on March 23, 2004. The applicant filed a second motion to reopen with the AAO on April 29, 2004.

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).

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 April 26, 2004. The motion was received by the CIS on April 29, 2004. Further, the applicant 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.

ORDER: The motion to reopen is rejected. The previous decision of the TSC director dated March 4, 2003, is affirmed.