



U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: **MAY 21 2007**

[WAC 05 147 70794]

IN RE:

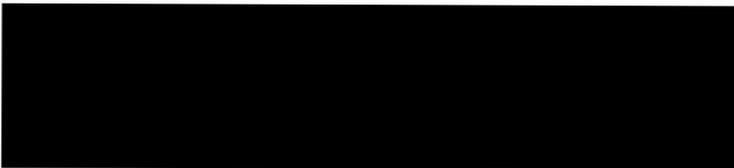
Applicant:



APPLICATION:

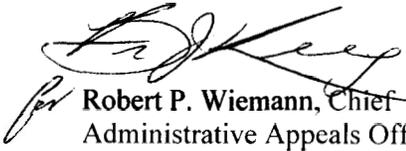
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC). A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion 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 director denied the re-registration application on May 9, 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 June 13, 2005. The AAO reviewed the record of proceeding and noted that the applicant's initial TPS application [WAC 01 289 57809] was denied by the CSC director on August 26, 2004, after determining that the applicant had abandoned his application based on his failure to respond to a request to appear for fingerprinting on February 27, 2004, and that there is no evidence in the record that the applicant had advised CIS of a change of his address, nor is there evidence that the notices were returned to CIS as undeliverable. The AAO further noted that the applicant had provided no evidence to establish that that he had met the criteria for continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). The AAO, therefore, affirmed the CSC director's decision to deny the re-registration application and dismissed the appeal on June 28, 2006.

On motion, counsel reasserts the applicant's claim of eligibility for TPS, and submits additional evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying periods. He further asserts that the ineffective assistance of the applicant's former counsel prevented the applicant from demonstrating that he is *prima facie* eligible for TPS.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard; (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond; and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The applicant has failed to submit evidence confirming that former counsel has been notified of the incompetency claim, or evidence demonstrating that a complaint, based upon the allegations, has been filed with the appropriate disciplinary authorities.

Any motion to reopen a proceeding before the Service 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 the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. 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 record in this case shows that the AAO issued a decision dated June 28, 2006. Coupled with three days for mailing, the motion, in this case, should have been filed on or before July 31, 2006. The motion was received

on September 1, 2006. The applicant neither addressed nor submitted any evidence to demonstrate that the delay was reasonable and was beyond his control.

Accordingly, the motion will be dismissed, and the previous decision of the AAO 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 AAO dated June 28, 2006, is affirmed.