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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

M,

[REDACTED]

FILE: [REDACTED]  
[EAC 01 210 51365]

Office: VERMONT SERVICE CENTER

Date: **OCT 03 2007**

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 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, Vermont Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen will be dismissed.

The applicant is a 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 application on August 5, 2004, because the applicant failed to establish his continuous residence and continuous physical presence in the United States during the requisite time periods.

The appeal from the director's decision was dismissed on November 18, 2005, after the Director of the AAO also concluded that the applicant had failed to establish his eligibility for TPS. On motion to reopen, counsel states that the applicant was not able to comply with the director's request for evidence dated April 21, 2004, because he moved from his former address.

The record of proceeding shows the applicant's last known address to be [REDACTED] Maryland. The record also shows that the request for evidence dated April 21, 2004, and the denial notices dated August 5, 2004 and November 18, 2005, were all sent to the applicant's last known address.

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 previous decision from the AAO was dated November 18, 2005. Any motion to reopen must have been filed within thirty days after service of the decision. 8 C.F.R. § 103.5(a)(1)(i). Coupled with three days for mailing, the motion, in this case, should have been filed on or before December 21, 2005. The motion to reopen was received on August 31, 2006.

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 AAO dated November 18, 2005, is affirmed.