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U.S. Citizenship
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SEP 20 2007

FILE:

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Office: ST. PAUL, MINNESOTA

Date:

[LIN 02 239 50418]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

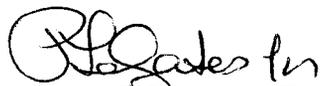
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 by the District Director, St. Paul Field Office. A subsequent appeal was dismissed by the Chief, 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 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 district director denied the application on May 24, 2005, because the applicant failed to establish that he had continuously resided in the United States since February 13, 2001 and had been continuously physically present in the United States since March 13, 2001.

An appeal from the district director's decision was dismissed on July 5, 2006, after the Chief, AAO, also concluded that the applicant had failed to establish his physical presence and residence in the United States during the periods required by the regulations. Counsel filed the current motion to reopen on February 23, 2007.

On motion to reopen, counsel claims that the applicant received a new Employment Authorization Card (EAC) on August 16, 2005, from the California Service Center that led the applicant to believe that his TPS application had been approved. Counsel further argues that this mistaken belief by the applicant is reasonable and should excuse the delay in filing the current motion.

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 is dated July 5, 2006. Coupled with three days for mailing, the motion, in this case, should have been filed on or before August 7, 2006. The motion to reopen was received on February 23, 2007.

Counsel's argument that the delay was reasonable because the applicant erroneously believed that his TPS application had been approved when he received his EAC on August 16, 2005 is not persuasive because the AAO decision mailed to him prior to that date clearly advised him that his appeal had been dismissed.

Assuming *arguendo* that the delay in filing is found reasonable and beyond the control of the applicant, the motion will still have to be dismissed because counsel's arguments and submissions did not overcome the basis for the AAO Chief's decision to dismiss the appeal. The automobile insurance documents he submitted dated from January 17, 2001, February 8, 2001, February 12, 2001, March 31, 2001, and April 8, 2001, were already in the record, having been submitted in support of the applicant's first TPS application and considered by both the district director and the Chief, AAO, in their decisions to deny his TPS application and dismiss his appeal, respectively.

By his own admission, during his interview and as indicated in his TPS and EAC applications, the applicant entered the United States on July 25, 2001. Consequently, the applicant is not eligible for TPS as an El Salvadoran because he arrived in the United States subsequent to the eligibility period and is unable to meet the continuous residence and continuous physical presence criteria described in 8 C.F.R. § 244.2(b) and (c).

It is noted that as a result of being fingerprinted in connection with this application, Citizenship and Immigration Services (CIS) received a report from the Federal Bureau of Investigation (FBI) indicating that the applicant was arrested on October 11, 1997, by the Quincy Public Safety Department and charged with Hit and Run. The record also contains a photocopy of the final court disposition indicating that the applicant was found guilty of Careless Driving and Leaving the Scene of the Accident on November 26, 1997, in the County Court of Gadsden County, Florida.

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 July 5, 2006, is affirmed.