



U.S. Citizenship
and Immigration
Services

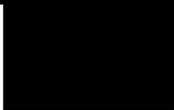
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FILE:



Office: VERMONT SERVICE CENTER

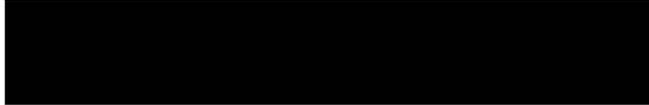
Date:

APR 16 2008

, consolidated]
[EAC 07 224 50581, motion]
[EAC 0123161886]

INRE:

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 Vermont 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. A subsequent appeal was dismissed by the Director (now Chief) of the AAO. The matter is now before the AAO on a motion to reopen. The appeal 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 application for TPS because although the applicant had provided his conviction record for his driving while intoxicated arrest on October 18, 1998, he had failed to provide the court disposition for his second arrest on January 21, 2001 for driving while intoxicated.

The appeal from the director's decision was dismissed on November 30, 2005, after the Chief of the AAO also concluded that the applicant had failed to establish his eligibility for TPS. On motion to reopen, the applicant reasserts his claim of eligibility for TPS.

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 AAO decision was dated November 30, 2005. Any motion to reopen must be 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 January 3, 2006. The motion to reopen was received on July 26, 2007.

In removal proceedings held on August 5, 1993, an Immigration Judge in New York, New York, ordered the applicant deported "in absentia" to El Salvador. It is further noted that the record contains an outstanding Form I-205, Warrant of Removal/Deportation, issued by the Field Office Director of the New York Field Office of Immigration and Customs Enforcement on April 26, 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 because the motion to reopen was not filed within the required time period. Accordingly, the motion to reopen is dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The appeal is dismissed.