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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER DATE: FEB 01 2008

[WAC 01 165 50528]

[WAC 07 243 50256-motion]

[REDACTED] consolidated]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 claims to be 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 because the applicant's true identity could not be determined.

The appeal from the director's decision was dismissed on June 27, 2007, as the AAO concurred with the director's findings. The AAO also determined that the applicant had failed to establish his qualifying continuous residence and physical presence in the United States during the requisite periods. Counsel subsequently filed a motion to reopen, which reasserts the applicant's claim of eligibility for TPS.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) requires that a motion to reopen a proceeding must be filed within 30 days of the underlying decision, and that a motion to reopen must be filed within 30 days except that failure to file a motion to reopen during this period may be excused when the applicant has demonstrated that the delay was reasonable and beyond the control of the applicant.

Pursuant to 8 C.F.R. § 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

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 regulation at 8 C.F.R. § 103.5(a)(1)(iii)(E) requires that a motion to be submitted to the office *maintaining* the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction.

The AAO rendered its decision on June 27, 2007. 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 July 30, 2007, at the California Service Center pursuant to 8 C.F.R. § 103.5(a)(1)(iii)(E). Counsel, nevertheless, sent the motion to the St. Paul, Minnesota District Office. The motion was properly received at the California Service Center on August 15, 2007, 49 days after the date of the AAO's decision. The motion is untimely.

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.

Finally, the record reflects that the applicant was ordered removed *in absentia* by an immigration judge on November 13, 2005. On November 17, 2005, a Form I-205, Warrant of Deportation, was issued upon the applicant.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO dated June 27, 2007, is affirmed.