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**U.S. Citizenship
and Immigration
Services**

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[REDACTED]

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: JAN 03 2008
[WAC 05 190 72054]
[EAC 07 217 50176-motion]

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 Director, California Service Center. 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 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 record reveals that the applicant filed an initial TPS application on March 12, 2001, under Citizenship and Immigration Services (CIS) receipt number SRC0114253729. The record contains a Notice of Decision dated January 29, 2002, which the Director, Texas Service Center denied that application because the applicant failed to establish that he had continuously resided in the United States since December 30, 1998, and had been continuously physically present in the United States since January 5, 1999. On November 19, 2003, the Director, Texas Service Center, issued another Notice of Denial, which indicated that the TPS application and Form I-765, Application for Employment Authorization, (SRC0325054010) was denied because the applicant failed to establish his eligibility for TPS.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 8, 2005, and indicated that he was re-registering for TPS. The director denied the re-registration application 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's appeal from the denial of his application was dismissed on October 4, 2006, as the AAO concurred with the director's findings. The AAO also determined that the applicant had failed to establish that he was eligible for late registration. The applicant subsequently filed a motion to reopen.

On motion to reopen, counsel reasserts the applicant's claim of eligibility for TPS. Counsel claims that the applicant filed a re-registration application under CIS receipt number SRC0122571254.¹

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 AAO rendered its decision on October 4, 2006. 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 November 7, 2006. This motion, dated May 21, 2007, was properly received on July 3, 2007, nine months after the date of the AAO's decision. Counsel has not set forth any reason for the delay. The motion is untimely.

¹ CIS electronic records indicate that this receipt number has been assigned to an individual since March 25, 2001, whose name, date of birth and place of residence in the United States do not coincide with the applicant.

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 October 4, 2006, is affirmed.