



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

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FILE: [REDACTED] **Office:** TEXAS SERVICE CENTER **Date:** JAN 03 2008
[SRC 01 162 57736]

INRE: Applicant: [REDACTED]

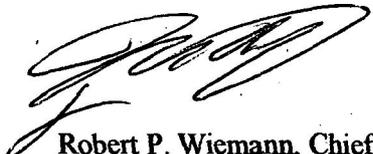
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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, Texas Service Center (TSC). A subsequent appeal and a motion to reopen were dismissed by the Director, Administrative Appeals Office (AAO). The **matter** is now before the AAO on a second 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 director denied the application because the applicant failed to **establish** her **continuous** residence in the United States **during** the requisite period.

The appeal from the director's decision was dismissed on June 7, 2005, after the Director of the AAO **concluded** that the appeal was untimely filed. The director of the AAO noted that the **applicant had failed** to establish her **eligibility** for TPS.

The applicant **then** filed a motion to reopen reasserting her claim of eligibility for **TPS**. **That** motion to reopen was dismissed by the Chief, AAO, on April 9, 2007, because it was untimely. The applicant then filed this second motion to reopen.

A motion to reopen must state the new facts to be proved at the reopened **proceeding**, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 1035(a)(2).

A motion to reconsider **must** state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision **was** based on **an** incorrect application of law or Service policy ... [and] must, when filed, also establish that the decision was incorrect **based** on the evidence of record at the time of the initial **decision**. 8 C.F.R. § 103.5(a)(3). A motion **that** does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The decision that **is** being appealed by the applicant **is** an AAO **determination** dated April 9, 2007, finding that the applicant had not submitted a timely motion **to the AAO** decision dated June 7, 2005. The current motion does not address the applicant's failure to **submit** a timely motion. **As** such, the threshold issue on which the appealed decision was based has not been overcome **on motion**.

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 **applicant** has not provided any new facts or additional evidence to overcome the previous decision of **the AAO**. 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 and the previous decisions of the AAO dismissing the appeal are affirmed.