

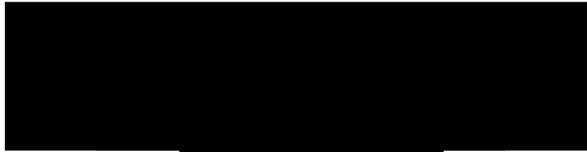
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**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: **JAN 03 2008**
[EAC 01 237 52925]
[EAC 07 227 51644-motion]

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 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, Vermont Service Center. An appeal was dismissed by the Administrative Appeals Office (AAO). A motion to reopen was filed that was subsequently dismissed by the AAO. The matter is again before the AAO on a second motion to reopen. The previous decisions of the AAO will be affirmed and the motion 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 TPS application because the applicant failed to establish he had continuously resided in the United States since February 13, 2001. The applicant's appeal from the denial of his application was dismissed on July 1, 2005, as the AAO concurred with the director's findings. The applicant subsequently filed a motion to reopen. The motion to reopen was dismissed by the AAO on April 4, 2007, as the issue on which the underlying decision was based had not been overcome on motion.

On motion, counsel requests that the late filing of this motion be accepted as the applicant's new address was provided on Form 0-28, Notice of Entry of Appearance as Attorney or Representative, at time the initial motion was filed. Counsel asserts he was not sent a copy of the AAO's decision dismissing the motion.

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 April 4, 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 May 7, 2007. The motion dated July 26, 2007, was received on July 30, 2007, 117 days after the AAO's decision was issued.

Counsel's claim that a new address for the applicant was provided on Form 0-28 at the time the initial motion was filed is not supported by the record. As previously noted in our decision to dismiss the initial motion, the record did not contain a Form 0-28. As such, the AAO's decision was furnished only to the applicant and sent to his address on record. The current motion is untimely filed.

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 decisions of the AAO dated July 1, 2005, and April 3, 2007, are affirmed.