

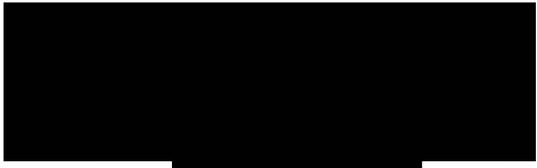
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: VERMONT SERVICE CENTER DATE: JAN 1 I 2008
(EAC 01 208 52077]
(EAC 07 227 51679-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.

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 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 failed to establish his nationality and continuous residence in the United States since February 13, 2001. The applicant's appeal from the denial of his application was dismissed on May 5, 2005, as the AAO concurred with the director's findings. The AAO also determined that the applicant had failed to establish his physical presence in the United States since March 9, 2001. The applicant subsequently filed a motion to reopen.

On motion to reopen, the applicant requests that the late filing of this motion be accepted due to ineffective assistance of counsel. The applicant contends that former counsel was responsible for the preparation of the his initial TPS application and motion as well as sending the necessary documentation to establish his nationality.

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 May 5, 2005. 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 June 7, 2005. This motion, dated July 26, 2007, was received on July 30, 2007, over two years after the AAO's decision was issued.

The record neither contains a Form G-28 from former counsel nor does the initial TPS application indicate that it was prepared by someone other than the applicant. As such, even if applicable in this instance, no evidence has been submitted indicating counsel has been notified of the incompetent claim, or evidence that the applicant has taken the required steps to file a complaint of ineffectual assistance of counsel with the proper licensing authority. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988). The applicant has not demonstrated that the delay was reasonable and beyond his control. The 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 decision of the AAO dated May 5, 2005, is affirmed.