



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **JAN 16 2008**  
[WAC 05 216 83497]  
[WAC 07 080 50118-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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the application. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. 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 re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible for re-registration for TPS.

The appeal from the director's decision was dismissed on December 26, 2006, after the Chief of the AAO also concluded that the applicant had failed to establish her eligibility for TPS. On motion to reopen, the applicant reasserts her claim of eligibility for TPS.

A motion to reopen or reconsider must be filed within thirty days of the underlying decision, except that failure to file during this period may be excused at the Service's discretion when the applicant has demonstrated that the delay was reasonable and beyond the control of the applicant. 8 C.F.R. § 103.5(a)(1)(i).

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 previous decision from the AAO was dated December 26, 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 January 28, 2007.

The record reflects that the motion was submitted to the service center on January 25, 2007 without an accompanying fee. The regulation at 8 C.F.R. § 103.2(a)(1) provides, in pertinent part, that "[e]very application, petition, appeal, motion, request, or other document . . . must be filed with the appropriate filing fee required by § 103.7." The regulation at 8 C.F.R. § 103.7 lists the fee for filing a motion as \$385 unless "no fee is chargeable for filing [the]application for relief." The motion to reopen, with the proper fee, was received on March 8, 2007.

The applicant's accredited representative asserts that she failed to include a fee with the motion because she relied upon information received through a phone call to the National Customer Service Center. According to the accredited representative, [REDACTED] told her that no filing fee was required. The representative argues that this misinformation and the rejection of the motion caused by the missing filing fee resulted in a delay beyond her control.

This argument is without merit. The accredited representative provided no confirmation of this conversation with the National Customer Service Center. Further, the amount of the fee is clearly set forth in the regulation and the accredited representative did not assert that she failed to find this information in the regulation. We therefore determine that the delay was not reasonable or beyond the control of 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.

We note that subsequent to the AAO's decision, the Vermont Service Center reopened and granted all of the previous Applications for Temporary Protected Status filed by the applicant.

**ORDER:** The motion to reopen is dismissed. The previous decision of the AAO dated December 26, 2006, is affirmed.