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U.S. Citizenship
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FILE:

[WAC 01 245 51856]
[WAC 05 211 79837]

OFFICE: California Service Center

DATE:

JAN 29 2008

IN RE:

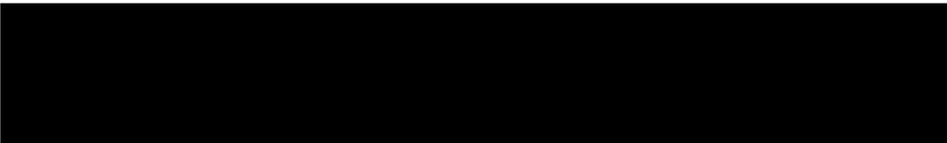
Applicant:



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DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn, and the re-registration application denied, by the Director, California Service Center. A subsequent appeal was dismissed by the Director, 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 to maintain his TPS under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director withdrew the applicant's TPS after determining the applicant was no longer eligible due to multiple misdemeanor convictions in the United States.

The appeal from the director's decision was dismissed on March 26, 2007, after the Director of the AAO also concluded that the applicant was no longer eligible for TPS. On motion to reopen, the applicant asserts through counsel that the applicant is eligible.

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 March 26, 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 April 30, 2007. The motion to reopen was received on June 5, 2007.

On motion counsel for the applicant refers to the AAO's mention of a bench warrant issued for the applicant, erroneously cited as June 6, 2006 (which counsel incorrectly calls a "misnomer"). This typographical error has no bearing on the fact that the applicant was convicted of the two separate charges referred to in the decision (driving with a blood alcohol content greater than .08%, and hit and run with property damage). Counsel again incorrectly uses the word "dicta" in reference to the AAO's decision. This incorrect use of legal terminology does not articulate a basis for accepting an untimely filed Motion to Reopen based on a delay beyond the control of the applicant, nor does it address the fact that the applicant has been convicted of two separate and distinct offenses, both misdemeanors. As the applicant has not articulated a legitimate basis for the untimely filing of this motion, and has not articulated any meritorious basis for appeal, this Motion to Reopen will be denied as untimely.

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.

