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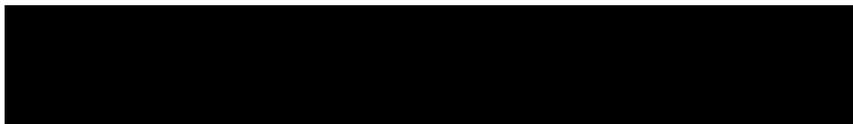


FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **JAN 29 2008**  
[WAC 06 117 70109]  
[WAC 07 268 52615-motion]

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:



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, California Service Center. A subsequent appeal was rejected by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and motion to reconsider. 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 application because the applicant failed to establish she had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

The applicant's appeal from the denial of her application was rejected as untimely filed by the AAO on August 1, 2007. On motion to reopen, counsel asserts that the untimely filing of the appeal should have been considered on the merits of a motion to reconsider pursuant to 8 C.F.R. § 103.3(a)(2)(V)(B)(2).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) requires that a motion to reopen or reconsider 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 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 regulation at 8 C.F.R. § 103.5(a)(1)(iii)(E) requires that a motion to be submitted to the office *maintaining* the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction.

The AAO rendered its decision on August 1, 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 September 4, 2007,<sup>1</sup> at the California Service Center pursuant to 8 C.F.R. § 103.5(a)(1)(iii)(E). Counsel, nevertheless, sent the motion to the AAO. The motion was received at the California Service Center on September 18, 2007, 48 days after the date of the AAO's decision. Counsel has not demonstrated that the delay was reasonable and beyond her control. The motion is 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 was not filed within the allotted time period. Accordingly, the motion will be dismissed and the previous decision of the AAO will not be disturbed.

**ORDER:** The motion is dismissed. The previous decision of the AAO dated August 1, 2007, is affirmed.

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<sup>1</sup> September 3, 2007, was a Federal holiday.