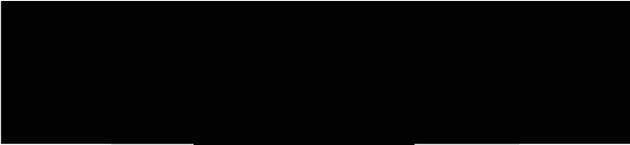


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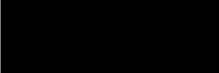


U.S. Citizenship
and Immigration
Services

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FILE:



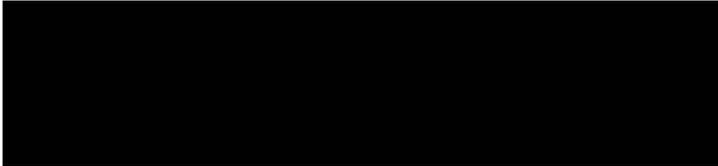
OFFICE: Vermont Service Center DATE: JUL 01 2008

[EAC 03 020 50990]

[EAC 08 019 51607, motion]

INRE:

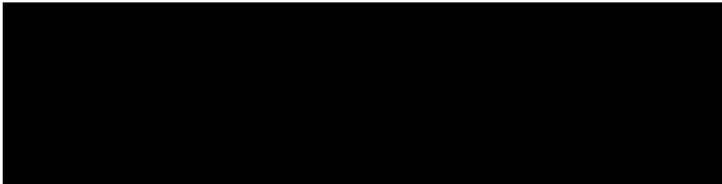
Applicant:



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 Vermont Service Center. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on motion to reopen. The motion will be dismissed.

The applicant is a native and 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 record reveals that the applicant filed an initial Form 1-821, Application for Temporary Protected Status, on September 15, 2002, under Citizenship and Immigration Services (CIS) receipt number EAC 03 020 50990. The Director, Vermont Service Center (VSC), denied that application on April 3, 2003, after he determined that the applicant failed to establish his eligibility for late initial registration. On May 6, 2003, the applicant filed an appeal from that decision. On February 18, 2004, the AAO dismissed that appeal. In dismissing the appeal, the AAO noted that the applicant also had not provided sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant has now submitted a motion to reopen.

The applicant filed a second Form 1-821 with the VSC on November 3, 2003, under CIS receipt number EAC 04 026 51777, and indicated that he was re-registering for TPS or renewing his temporary treatment benefits. The director denied that application on June 8, 2004, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. On July 9, 2004, the applicant filed an appeal from the decision which was dismissed by the AAO on January 3, 2007.

On March 14, 2005, the applicant filed a third Form 1-821 with the California Service Center (CSC), under CIS receipt number WAC 05 165 71974, and again indicated that he was re-registering for TPS or renewing his temporary treatment benefits. The director denied that application on August 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. On February 23, 2006, the applicant submitted an appeal from the decision which was dismissed by the AAO on January 3, 2007.

On motion, the applicant, through **counsel**, states that the community service office that has been assisting the applicant had not submitted his application in a timely manner; therefore, CIS received his TPS application six days after the initial filing dateline. Counsel further states that the applicant is eligible for TPS because he is a national of El Salvador, who has been continuously physically present and continuously resided in the United States since his entry in December of 1999.

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 February 18, 2004. 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 March 22, 2004. The motion to reopen was received on October 24, 2007.

The applicant's statements made on motion have been considered. Nonetheless, CIS is not responsible for any action or inaction of the applicant's representative. There is no waiver available, even for humanitarian reasons, of the requirements stated above.

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 February 18, 2004, is affirmed.