



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

M.

FILE:

Office: VERMONT SERVICE CENTER

Date:

**JUL 28 2008**

[EAC 02 268 51042]

[EAC 08 101 51536 - 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.

Handwritten signature of Robert P. Wiemann in black ink.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The applicant filed a motion to reopen that was subsequently dismissed by the AAO. The matter is again before the AAO on a second 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 director determined that the applicant failed to establish he 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 director, therefore, denied the application.

Upon review of the record of proceeding, the AAO concurred with the director's conclusion and dismissed the appeal on April 6, 2005.

On motion to reopen, the applicant reasserted his claim of eligibility for TPS but failed to submit sufficient probative evidence in an attempt to establish his qualifying residence in the United States.

Upon review of the record of proceeding, the AAO dismissed the motion on July 20, 2007.

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 July 20, 2007. Coupled with three days for mailing, the motion, in this case, should have been filed on or before August 22, 2007. The motion to reopen was received on February 25, 2008.

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.