



**U.S. Citizenship
and Immigration
Services**

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[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUN 02 2008
[EAC 07 260 50523, motion]
[WAC 0520785591]

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC). A subsequent appeal was dismissed by the Chief, Administrative Appeals Office (AAO). The matter is now 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 (fPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number EAC 01 167 51946 during the initial registration period. The VSC Director denied that application on February 4, 2003, after finding that the applicant had **failed** to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present since March 9, 2001. An appeal was dismissed by the then Director (now Chief) of the AAO on February 4, 2003. A subsequent late motion to reopen was dismissed by the Director of the AAO on December 18, 2003.

The applicant filed a subsequent Form I-821 and indicated that he was re-registering for TPS. The California Service Center (CSC) Director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. A subsequent late appeal was rejected by the CSC Director on April 17, 2006. The applicant filed a motion to reopen that was dismissed by the Chief of the AAO on December 22, 2006. This is a motion to reopen the December 22, 2006 AAO **determination**.

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 AAO decision was dated December 22, 2006. Any motion to reopen must be 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 24, 2007. The motion to reopen was received on February 20, 2007.

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 because the motion to reopen was not filed within the required time period. Accordingly, the motion to reopen is dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion to reopen is dismissed.