

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
**PUBLIC COPY**



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

M1

[REDACTED]

FILE:

[REDACTED]

OFFICE: Nebraska Service Center

DATE: NOV 03 2008

[WAC 01 245 51054]

[LIN 07 116 53280, *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 Nebraska Service Center. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Nebraska Service Center (NSC). A subsequent appeal was dismissed by the Chief, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The previous decision of the AAO will be affirmed and the motion to reopen will be dismissed.

The applicant is stated 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 record reveals that the applicant filed a TPS application during the initial registration period on March 19, 2001, under receipt number WAC 01 245 51054. The NSC director denied that application on February 17, 2004, after he determined that the applicant failed to establish her continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. On March 8, 2004, the applicant submitted an appeal from the director's decision. That appeal was dismissed by the AAO on September 5, 2006, after the AAO determined that the applicant had failed to establish her eligibility for TPS. The AAO further noted that the applicant had also failed to establish her national identity. The applicant has now submitted a motion to reopen.

On motion, counsel states that the motion should be considered timely since the applicant has still not received a written decision from the AAO or the Nebraska Service Center.

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 September 5, 2006. 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 October 9, 2006. The motion to reopen was received on March 13, 2007.

In addition, the record of proceeding shows that the AAO's decision on September 5, 2006, was sent to the applicant's address of record at [REDACTED] Frankfort, IN 46041. There is nothing in the record to indicate the notice decision was returned by the U.S. Postal Service as undeliverable.

It is also noted that the applicant was granted voluntary departure from the United States until December 17, 1997, by an immigration judge, Los Angeles, California, based upon her apprehension in Las Vegas, Nevada, on June 13, 1996.

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 September 5, 2006, is affirmed.