

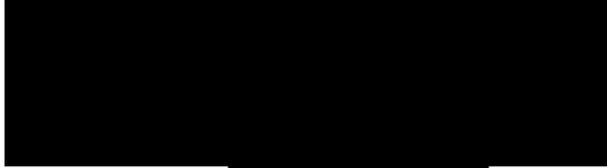
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FILE:



OFFICE: Vermont Service Center

DATE: OCT 02 2008

[EAC 02 177 51340]

[EAC 08 224 50884, motion]

IN RE:

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:

SELF-REPRESENTED

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.

for Robert P. Wiemann, Chief
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 matter is now before the AAO on a motion to reopen. The motion to reopen 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 TPS application during the initial registration on April 26, 2002. On June 3, 2003, the Service Center requested the applicant to submit additional evidence establishing her continuous residence and continuous physical presence in the United States during the requisite periods. The director denied that application on July 31, 2003, after he determined that the applicant failed to submit evidence establishing her eligibility for TPS. The applicant submitted a subsequent appeal from the director's decision on August 27, 2003. On October 8, 2004, the AAO dismissed the appeal and affirmed the director's decision. On February 19, 2005, the applicant submitted a motion to reopen which was dismissed by the AAO on March 21, 2008, because the motion was untimely filed. The applicant has now submitted a second motion to reopen.

On motion, the applicant requests that the decision on her TPS application be reviewed.

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 March 21, 2008. 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 April 23, 2008. The motion to reopen was received on August 15, 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. The previous decision of the AAO is affirmed.