

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

*M1*

[REDACTED]

NOV 07 2007

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

[EAC 02 094 50882]

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:

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.

*John H. Vaughan*  
*for*

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). A motion to reopen that decision was subsequently dismissed by the AAO. The matter is now before the AAO on a second motion to reopen. The motion to reopen will be dismissed.

The applicant is 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 applicant filed her initial Form I-821, Application for Temporary Protected Status, on January 22, 2002. The director denied the application on April 28, 2003, because the applicant failed to establish her qualifying continuous residence in the United States during the requisite time period. An appeal from the director's decision was dismissed on July 21, 2004, after the Chief of the AAO also concluded that the applicant had failed to establish her eligibility for TPS.

A motion to reopen the AAO's decision, filed on February 15, 2005, was dismissed as untimely filed on May 26, 2006. The applicant filed the current motion to reopen that decision on September 5, 2006.

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 May 26, 2006. Coupled with three days for mailing, the motion, in this case, should have been filed on or before June 28, 2006. The applicant's motion to reopen, however, was not received until September 5, 2005.

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 May 26, 2006, is affirmed.