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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

OFFICE: Vermont Service Center
[Redacted] dated therein]

DATE: NOV 26 2007

IN RE:

Applicant:

[Redacted]

APPLICATION:

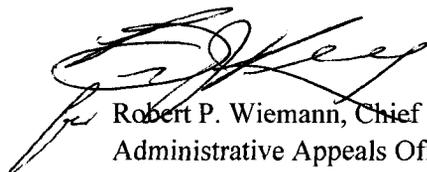
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC). An appeal was dismissed by the Chief, Administrative Appeals Office (AAO). A late filed motion to reopen or reconsider was also dismissed by the Chief, AAO. The matter is now before the AAO on another motion to reopen. The motion 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 his initial Form I-821, Application for Temporary Protected Status [EAC 01 190 54195], on April 30, 2001. The director denied the application on August 6, 2002, on the ground of abandonment. The applicant filed a second TPS application on August 19, 2002. The director denied the application on July 9, 2003, on the ground that the applicant had been convicted of two or more misdemeanors committed in the United States, which rendered him ineligible for TPS under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The applicant filed an appeal, which was dismissed by the AAO on March 7, 2005, on the grounds that the applicant, as shown by the evidence of record, had been convicted of three misdemeanors and a drug-related felony, making him ineligible for TPS under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a), and inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act. On June 10, 2005, the applicant filed a motion to reopen or reconsider, which was dismissed by the AAO on July 14, 2006, on the ground that it was not filed within the 33-day deadline prescribed in the regulations at 8 C.F.R. § 103.5(a)(1)(i) and 8 C.F.R. § 103.5a(b).

On August 17, 2006, the applicant filed another motion to reopen or reconsider. Like the previous motion, the current motion was not filed within the time period specified in the regulations. A motion to reopen or reconsider, like an appeal, must be filed within thirty days of the underlying decision (33 days if the decision was served by mail), 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. *See* 8 C.F.R. § 103.5(a)(1)(i) and 8 C.F.R. § 103.5a(b). The date stamp on the Federal Express envelope containing the applicant's documentation shows that the motion was received at the Vermont Service Center on Thursday, August 17, 2006 at 3:48 p.m., which was 34 days after the AAO's decision of July 14, 2006. The applicant has not demonstrated that the delayed filing was reasonable and beyond his control. As the motion was not timely filed, it will be dismissed.

The burden of proof in these proceedings rests solely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the motion to reopen or reconsider was not filed within the time period prescribed in the regulations. Accordingly, the AAO will dismiss the motion and affirm the previous decisions issued by the Director, VSC, denying the application, and by the Chief, AAO, affirming the denial.

ORDER: The motion is dismissed. The decisions of the VSC Director, dated July 9, 2003, and the Chief of the AAO, dated March 7, 2005, are affirmed.