



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

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FILE: [REDACTED]
[EAC 01 16351474]

Office: VERMONT SERVICE CENTER

Date: **APR 03 2008**

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: 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 Director, Vennont Service Center (VSC), denied the application. 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 motion to reopen will be dismissed.

The applicant is a native and citizen of El Salvador who seeks Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to establish his qualifying continuous residence and continuous physical presence. The appeal from the director's decision was dismissed on September 30, 2002, after the AAO also concluded that the applicant failed to establish his qualifying continuous residence and continuous physical presence.

On motion to reopen, the applicant reasserts his claim of eligibility for TPS.

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.P.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.P.R. § 103.5a(b).

The previous decision from the AAO was dated September 30, 2002. Any motion to reopen or reconsider must have been filed within 30 days after service of the decision. 8 C.P.R. § 103.5(a)(1)(i). Coupled with three days for mailing, the motion, in this case, should have been filed on or before November 4, 2002. The motion to reopen was received on January 3, 2003, or 95 days after the decision was issued. Accordingly, the motion was untimely filed.

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 appeal is dismissed. The previous decision of the AAO dated September 30, 2002, is affirmed.