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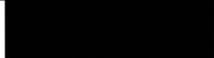
U.S. Citizenship  
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Services

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FILE:



OFFICE: Vermont Service Center DATE:

APR 28 2008

[SRC 03 15653689]  
[EAC 07 107 50974, *motion*]

INRE:

Applicant:



APPLICATION: Application for Employment Authorization under 8 C.F.R. § 274a.12(c)(19)

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 Vermont Service Center. 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, Texas Service Center. A subsequent appeal was dismissed by the Chief, Administrative Appeals Office. The matter is now before the Administrative Appeals Office (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 a native and citizen of Nicaragua 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 on May 9, 2003, under CIS receipt number SRC 03 156 53689, after the initial registration period for Nicaragua had ended. That application was denied by the Director, Texas Service Center, on July 3, 2003 because the applicant did not submit sufficient evidence to establish that she was eligible for late initial registration. A subsequent appeal of the director's decision was dismissed on September 8, 2004 after the Chief of the AAO also concluded that the applicant was not eligible for TPS. The applicant submitted a motion to reopen which was dismissed on January 30, 2007, because the applicant failed to articulate any basis of eligibility or address the reasons for the dismissal of the application.

On motion to reopen, the applicant asks CIS to reopen her case and give her the opportunity to be legal in the United States. She also states that she has been in the United States since 1997 and has provided all of the requested evidence. The applicant also submits evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

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.F.R.* § 103.5a(b).

The previous decision from the AAO was dated January 30, 2007. 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 March 5, 2007.

The instructions to the Form I-290B, Notice of Appeal, very clearly dictate that an appeal or motion is not to be sent directly to the AAO; but, rather, to the "office which made the unfavorable decision." The applicant, nevertheless, sent her motion to the AAO. The motion is not considered properly received until it is received by the Service Center that rendered the unfavorable decision. The motion was properly received at the Texas Service Center on March 8, 2007.

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.