



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

OFFICE: Vermont Service Center

DATE:

JUL 29 2008

[EAC 99 210 51699]

[EAC 07 205 50694, motion]

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). 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 claims to be a citizen of Honduras 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 June 24, 1999, under receipt number EAC 99 210 51699. The VSC director denied that application on June 30, 2000, after he determined that the applicant had failed to establish that she has been continuously physically present in the United States since January 5, 1999, to the date of filing her application. A subsequent appeal from the director's decision was dismissed by the AAO on March 17, 2001, after the Acting Director, now Chief, of the AAO also concluded that the applicant had failed to establish her eligibility for TPS. The applicant has now submitted a motion to reopen.

On motion, counsel states that the motion should be granted because the applicant has made every effort to provide CIS the document she needed to establish her presence. In addition, the applicant did not understand her obligations as she is not a native of the United States and English is her second language.

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 17, 2001. 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 24, 2001. The motion to reopen was received on July 11, 2007, more than six years after the AAO's decision to dismiss the applicant's appeal.

It is noted that the record contains documents related to the applicant's residence in the United States from the period of 1990 to 1997; conversely, the record does not contain any documentation to indicate that the applicant has been continuously physically present in the United States since January 5, 1999, to the date of filing her application on June 24, 1999. On motion, the applicant submitted additional evidence in an attempt to establish her continuous physical presence in the United States during the requisite period. The evidence included copies of pay stubs, bank statements, checks, and phone bills which cover the period from 2000 to 2004.

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 March 17, 2001, is affirmed.