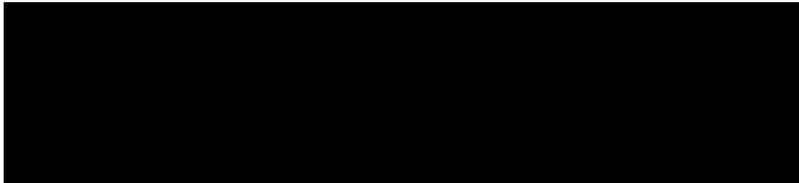


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prevent clearly unwarranted
invasion of personal privacy



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

PUBLIC COPY



FILE:



Office: Texas Service Center

Date: **MAR 03** 2008

[WAC 05 216 85601]

[SRC 07 241 53578, *motion*]

INRE:

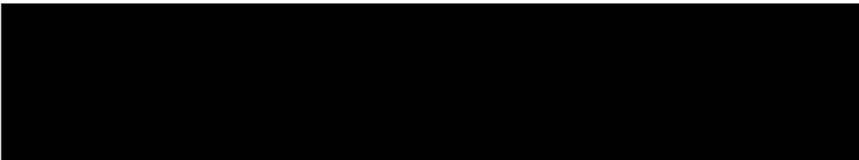
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Texas Service Center. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. 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 is a native and 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 record reveals that the applicant filed an initial TPS application on April 10, 2001, under CIS receipt number SRC 01 176 54768. The Director, Texas Service Center, denied that application on June 4, 2004, due to abandonment, because the applicant failed to respond to a request for evidence to establish his continuous residence and continuous physical presence in the United States. A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The record reflects that on September 19, 2003, the applicant filed a motion to reopen the denial decision. The director granted the motion on January 4, 2004, and requested additional evidence. The director denied the application on June 4, 2004, because the applicant failed to submit documents in response to the notice. The director again deemed the application abandoned. On September 8, 2005, the applicant filed a motion to reopen and submitted additional evidence. The director denied the motion on October 13, 2005, because the additional evidence was insufficient to overcome the reasons for the initial denial.

The applicant filed the current Form 1-821, Application for Temporary Protected Status, on May 4, 2005, under CIS receipt number WAC 05 216 85601, and indicated that he was re-registering for TPS. The Director, California Service Center, denied that application on August 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. The record reflects that a subsequent appeal to the Administrative Appeals Office (AAO) was dismissed by the AAO Chief on December 29, 2006. The applicant filed this late motion to reopen/reconsider the AAO's decision, on June 4, 2007.

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 AAO Chief's dismissal decision is dated December 29, 2006. Any motion must be properly filed within thirty days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). 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). Coupled with three days for mailing, the motion, in this case, should have been filed on or before January 31, 2007. The motion was received, with the correct fee, on June 4, 2007. Further, the applicant has failed to provide any explanation for the delay in filing the motion.

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 applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. 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 December 29, 2006, is affirmed.