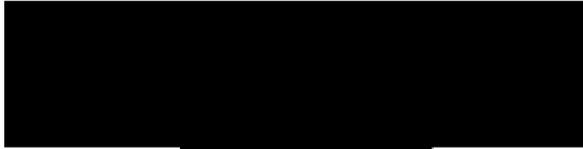


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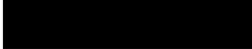
U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



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FILE:



[WAC 01 217 53122]

OFFICE: CALIFORNIA SERVICE CENTER DATE:

MAR 14 2007

IN RE:

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:

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.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied, reopened, and denied again by the Director, California Service Center. A subsequent appeal was rejected as untimely filed 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 her TPS application during the initial registration period. The applicant's Federal Bureau of Investigation (FBI) fingerprint results report revealed that the applicant was arrested in Los Angeles, California, on June 11, 1991, and charged with battery. On November 25, 2003, the applicant was requested to provide the final court disposition of her arrest. She was also requested to submit evidence to establish her identity and nationality and her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant did not respond to the request within the specified period. The director initially denied the application on March 8, 2004, after determining that the applicant had abandoned her application by failing to respond to the request for additional evidence.

On April 8, 2004, the applicant filed a motion to reopen her case. On motion, the applicant stated that she didn't respond to the request for additional evidence within the specified period because she was having difficulty contacting her attorney. The applicant submitted the final court disposition of her arrest, evidence to establish her identity and nationality, and documentation relating to her residence and physical presence in the United States. The court documents revealed that the applicant was charged with: (1) cruelty to a child in violation of section 273a(a)(1) PC, a felony; (2) inflicting injury on a child in violation of section 273d(a) PC, a felony; (3) cruelty to a child in violation of section 273a(a)(1) PC, a felony; and, (4) inflicting injury on a child in violation of section 273d(a) PC, a felony. On July 5, 1995, the applicant pled guilty in the Superior Court of California, County of Los Angeles, to counts (1) and (3), both felonies. The applicant was placed on probation for a period of five years, and was ordered to spend 180 days in jail and pay restitution in the amount of \$200. Counts (2) and (4) were dismissed. (Case Number [REDACTED])

On April 22, 2004, the director granted the motion to reopen and denied the application again because he found the applicant had been convicted of two felonies.

The Director (now Chief) of the AAO rejected the applicant's appeal from the denial decision as untimely filed on July 1, 2005.

On August 19, 2005, the applicant filed the current motion to reopen.

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 denial decision was dated April 22, 2004. The AAO decision rejecting the applicant's appeal as untimely filed was dated July 1, 2005. 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 August 4, 2005. The motion to reopen was not received until August 19, 2005. Regardless of whether the motion is applied to the initial denial of the application or the AAO decision rejecting her prior appeal as untimely filed, this motion to reopen was not timely filed and must be dismissed.

It is noted that **the applicant is statutorily ineligible for TPS due to her record of two felony convictions.** Any future TPS applications filed by the applicant will also be denied for this same reason.

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 decisions of the director and the Chief of the AAO are affirmed.