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U.S. Citizenship
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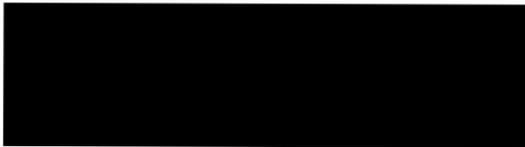
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FILE: [REDACTED] OFFICE: Vermont Service Center DATE: AUG 29 2008
[EAC 01 205 51737]
[EAC 08 127 51388, motion]

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:



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.


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 Chief of the AAO. 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 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 during the initial registration on May 29, 2001, under receipt number EAC 01 205 51737. On May 5, 2003, the director issued a request for the applicant to submit evidence establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. On June 10, 2003, the director denied that application after he determined that the applicant had failed to submit any documentation showing that he has established his continuous residence and continuous physical presence in the United States during the qualifying periods. On July 28, 2003, the applicant submitted an appeal from the director's decision which was dismissed by the Chief of the AAO on October 2, 2006, after he concluded that the applicant had failed to establish his eligibility for TPS.

On February 20, 2008, the director denied the current application for Employment Authorization (EAC 08 009 76135) because the underlying TPS application (EAC 01 205 51737) had been denied. In response to the director's decision, the applicant filed a Form I-290B, Notice of Appeal or Motion. It is noted that the AAO has no jurisdiction over application for Employment Authorization; therefore, this decision will address a motion on the applicant's TPS application.

On motion, counsel states that the applicant is prima facie eligible for TPS since he is a native and citizen of El Salvador who entered the United States on or about May 1, 1994. Counsel also states that the applicant has timely filed his TPS application and has been receiving all of his employment authorization documents.

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 October 2, 2006. 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 November 6, 2006. The motion to reopen was received on March 21, 2008.

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 October 2, 2006, is affirmed.