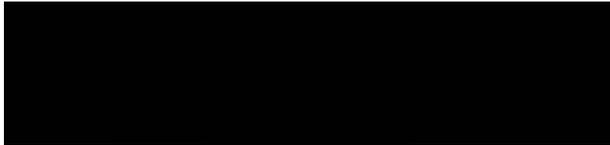


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U.S. Citizenship
and Immigration
Services

PUBLIC COPY



FILE:

OFFICE: Vermont Service Center

DATE: JAN 24 2008

[EAC 02 010 53344] - consolidated herein]
[EAC 07 13050347 ~ Motion]

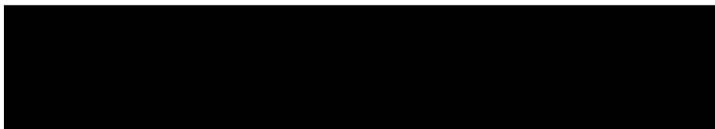
INRE:

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 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, Vermont Service Center (VSC). An appeal from that decision was dismissed by the Director, now Chief, Administrative Appeals Office (AAO). The case is now before the AAO on a motion to reopen. The motion will be dismissed.

The applicant, who claims to be a citizen of El Salvador, is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.c. § 1254.

The director denied the application on April 2, 2003, on the ground that the applicant was ineligible for TPS because he had been convicted of two misdemeanors committed in the United States.. An appeal from that decision, filed on April 19, 2003, was dismissed by the AAO on April 15, 2004.

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 issued on April 15, 2004. As prescribed in the regulations above, the applicant had 33 days to file a motion to reopen or reconsider that decision. ¹ Thus, the filing deadline for a motion was Monday, May 10, 2004. The applicant's motion to reopen was not filed until April 2, 2007 - nearly three years later. The applicant has provided no explanation for the delay.

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, and the applicant has not demonstrated that the delay was reasonable and beyond his control. 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 April 15, 2004, is affirmed.

¹ If the last day of the period for taking an action falls on a weekend or a holiday, the deadline is extended until the next working day. See 8 C.F.R. § 1.1(h).