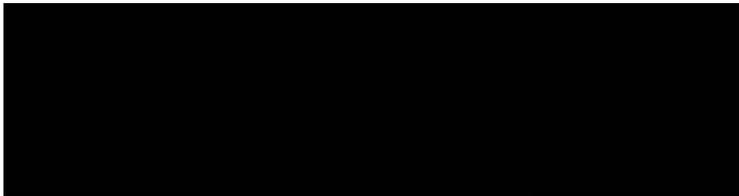


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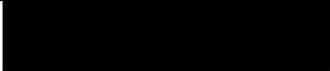


**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



FILE:



Office: Vermont Service Center

Date: **MAR 03 2008**

[EAC 02273 53481]

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.

A handwritten signature in black ink, appearing to read "R. Wieman".

Robert P. Wieman, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (YSC). A subsequent appeal was dismissed by the Chief, Administrative Appeals Office (AAO). The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion to reopen will be dismissed.

The applicant is a citizen of El Salvador who is applying for 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 application for TPS on August 26, 2002, under Citizenship and Immigration Services (CIS) receipt number EAC 02 273 53481. The Director, YSC, denied that application on July 11, 2003, because the applicant failed to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence from March 9, 2001, to the date of filing. On August 4, 2003, the applicant filed a motion to reopen the denial decision. With his motion to reopen the applicant submitted additional evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States. The YSC director granted the motion to reopen. After a complete review of the record, the YSC director determined that the grounds of denial had not been overcome and denied the application again on March 3, 2004. A subsequent appeal was dismissed by AAO Chief, on August 29, 2005. The AAO Chief affirmed the director's denial, and also noted that the applicant did not establish the requisite continuous residence and his continuous physical presence.

The applicant filed a subsequent TPS application, under CIS receipt number EAC 05 151 70105, and indicated that he was re-registering for TPS. That application was denied on December 19, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to re-register for TPS.

The record also reflects that an Application for Employment Authorization, Form I-765, under CIS receipt number EAC 06284 78134, was denied on October 23, 2006.

The applicant filed this late motion to reopen on July 18, 2007. On motion the applicant states that his Application for Employment Authorization (EAC 0628478134) was denied in 2006 because his TPS application was deemed abandoned. The applicant also states that he never intended to abandon his TPS application. As stated above, the director denied TPS, and the Chief, AAO, affirmed the director's denial decision, and in dismissing the appeal noted that the applicant had failed to submit sufficient evidence to establish the requisite continuous residence and continuous physical presence criterion described in 8 C.F.R. § 244.2(b) and (c).

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's dismissal decision is dated August 29, 2005. Any motion must be properly filed within thirty days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). Coupled with three days for mailing, the motion, in this case, should have been filed on or before October 3, 2005. The motion was received, with the correct fee, at the California Service Center on July 18, 2007.

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 director's decision will not be disturbed.

ORDER: The motion to reopen is dismissed. The decision of the Chief, AAO, dated August 29, 2005, is affirmed.