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

ML

FILE:

Office: VERMONT SERVICE CENTER

Date: **AUG 06 2009**

[EAC 02 251 51551

[EAC 07 02 232 50274- MOTION]

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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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 and the previous decision of the AAO will be affirmed.

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 director denied the application after determining that the applicant failed to establish he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

Upon review of the record of proceeding, the AAO concurred with the director's conclusion and dismissed the appeal on May 11, 2007.

On motion to reopen, counsel for the applicant reasserts the applicant's claim of eligibility for TPS but failed to submit any probative evidence in an attempt to establish his qualifying residence in the United States.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The applicant's motion to reopen consists of a statement from the applicant and submission of non-probative evidence. The applicant provides documents indicating that his father was gravely ill. The applicant asserts that he then went to El Salvador in 2001, without an advance parole in order to care for his father who passed away in September 2001, and subsequently cared for his elderly and ill mother who was greatly impacted by her husband's death. Consequently, the applicant should have known that the absence quite possibly might not be a "brief, casual and innocent absence." The term brief, casual and innocent absence, as defined in 8 C.F.R. §244.1, means a departure from the United States in which each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence. The applicant intended to care for his father who was seriously ill, and there was no way to tell how long such an absence might be. Thus, the absence was not brief, casual and innocent and therefore the applicant can not establish continuous residence and continuous physical presence in the United States during the qualifying period. As such, the issue on which the underlying decisions were based has not been overcome on 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 is affirmed.