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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



MA

DATE: **FEB 06 2012** Office: VERMONT SERVICE CENTER FILE:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a 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 because the applicant failed to establish he was eligible for late registration. The AAO, in dismissing the appeal on June 25, 2010, concurred with the director's findings. The motion was dismissed by the AAO on June 15, 2011, as the issue on which the underlying decision was based had not been overcome on motion.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

(B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

In accordance with the U.S. Citizenship and Immigration Services regulation at 8 C.F.R. § 292.4(a) as well as the instructions to the Form I-290B, Notice of Appeal or Motion, a new Form G-28 must be filed with a motion filed with the AAO. This regulation applies to all appeals and motions filed on or after March 4, 2010. See 75 Fed. Reg. 5225 (February 2, 2010).

The Form I-290B is signed by [REDACTED] who claims to be representing the applicant on motion. The Form I-290B was filed on August 3, 2011, without the required new Form G-28. Pursuant to 8 C.F.R. § 292.4(a), the AAO sought to clarify whether [REDACTED] is authorized to represent the applicant in this proceeding. On December 6, 2011, a facsimile was sent to counsel's office requesting that a new properly executed Form G-28 be sent to the AAO by mail or fax within five business days. More than a month later the requested Form G-28 has not been submitted to the AAO. As there is no evidence that [REDACTED] is authorized to represent the applicant in this proceeding and to file a Form I-290B on behalf of the applicant, [REDACTED] is not authorized to file a motion. As the motion was not properly filed, it will be dismissed.

Assuming, arguendo, the required new Form G-28 had been submitted, the motion still would be dismissed as it was untimely filed.¹ The AAO rendered its decision on June 15, 2011. The Form I-

¹ A motion to reopen or reconsider a proceeding must be filed within 30 days of the underlying decision, and that a motion to reopen must be filed within 30 days except that failure to file a motion during this period may be excused 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

290B dated July 15, 2011, was received on August 3, 2011, 49 days after the date of the AAO's decision.²

As the appeal was improperly filed, the motion must be dismissed and the decision will be furnished only to the applicant.

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 was not properly filed. Accordingly, the motion will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion is dismissed. The previous decision of the AAO dated June 15, 2011, is affirmed.

mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

² The AAO's decision of June 15, 2011, was sent to the applicant's address of record which he still maintains on motion.