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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: Office: VERMONT SERVICE CENTER

JAN 26 2012



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:

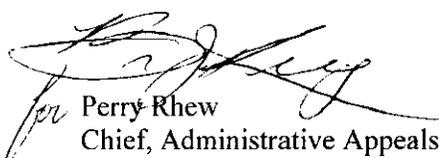


INSTRUCTIONS:

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,


for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). A motion to reopen and reconsider was denied by the 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 had failed to submit the requested court documentation, and the applicant failed to provide requested documentary evidence establishing that he and Francisco Magdaleno Berrios are one and the same. The AAO, in dismissing the appeal on April 13, 2010, concurred with the director's findings.

On September 29, 2010, the AAO denied the initial motion, as the applicant had failed to file a timely motion.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) requires that a motion to reopen a proceeding or reconsider must be filed within 30 days of the underlying decision, except that failure to file during this period may be excused when the applicant has demonstrated that the delay was reasonable and beyond the control of the applicant. The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

On current motion, counsel provides a Form I-797C, Notice of Action, reflecting that the Notice of Appeal or Motion, Form I-290B, was received at the Vermont Service Center on May 14, 2010.

The regulation at 8 C.F.R. § 103.5(a)(1)(iii)(E) requires that a motion to be submitted to the office *maintaining* the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction.

The Form I-290B, Notice of Appeal or Motion, is very clear in indicating that the motion is not to be sent directly to the AAO. Likewise, the AAO's decision of September 29, 2010, indicated that "[a]ll motions must be submitted to the Vermont Service Center."

As noted in the decision of September 29, 2010, the Form I-290B was received at the AAO on May 13, 2010. On May 14, 2010, the AAO returned the Form I-290B, the fee and supporting documents to counsel with instructions to send it to the Vermont Service Center. The motion was received at the Vermont Service Center on May 20, 2010.¹

The Form I-797C is in error as the motion was incorrectly updated as being received at the office maintaining the record on May 14, 2010 instead of May 20, 2010.

¹ The U.S. Postal Service track and confirmation receipt indicates the item was delivered at 2:24 p.m. on May 20, 2010, in Saint Albans Vermont.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met his burden of proof. Accordingly, the motion will be dismissed and the decisions of the AAO will be affirmed.

ORDER: The motion is dismissed. The previous decisions of the AAO are affirmed.