

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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



MI

DATE: **FEB 06 2012** Office: CALIFORNIA 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. § 1254a

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,

Perry Rhew
Chief, Administrative Appeals Office

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

It is noted that counsel incorrectly indicated on the Form I-290B, Notice of Appeal or Motion, that he was filing an appeal from the AAO's decision of August 1, 2008. As the AAO has already issued a decision for the appeal, the current Form I-290B, Notice of Appeal or Motion, will be treated as a motion to reopen.

The applicant claims to be 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.

On February 16, 2007, the AAO, in dismissing the appeal, concurred with the director's finding that the applicant was ineligible to re-register for TPS.¹ The applicant filed a motion to reopen, which was received on December 27, 2007. On August 1, 2008, the AAO dismissed the motion as it was untimely filed.

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).

On current motion, counsel argues that the decision of August 1, 2008, did not address whether untimely filing of the initial motion was reasonable or beyond the control of the applicant.

A review of the documents submitted with the initial motion indicates that the applicant provided an affidavit indicating, in pertinent part:

On March 12, 2007, I consulted with the attorney [REDACTED] regarding the denial of my TPS case. Around the time I went to the appointment with [REDACTED]. [REDACTED] my father was very sick in El Salvador and I had to send [him] money. As a consequence, I could not pay [REDACTED] to appeal my TPS case.

The AAO does not consider a ten-month delay to be reasonable or beyond the control of the applicant. The applicant through counsel could have submitted the Form I-290B with a fee waiver request pursuant to 8 C.F.R. § 103.7(c). U.S. Citizenship and Immigration Services is not responsible for the inaction of the applicant or his representative.

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, the prior decision of the AAO will be affirmed.

ORDER: The motion is dismissed. The previous decision of the AAO dated August 1, 2008, is affirmed.

¹ The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.