



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **FEB 26 2013** Office: VERMONT SERVICE CENTER

FILE: [Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254a

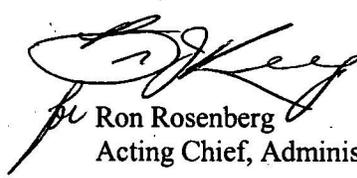
ON BEHALF OF APPLICANT:
[Redacted]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The applicant appealed the decision of the AAO. A motion to reopen, rather than an appeal, is the proper forum in this case, pursuant to 8 C.F.R. § 103.5(a)(1)(i). The appeal, therefore, will be treated as a motion to reopen. The motion will be dismissed, and the previous decision of the AAO will be affirmed.

The applicant is a native and citizen of El Salvador who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director withdrew the applicant's TPS because she had failed to submit requested court documents relating to "every charge against" her including arrests on October 3, 2003 for petit larceny and December 20, 2003 for forgery.

On appeal, the applicant submitted court documentation relating to her arrests on October 3, 2003 for petit larceny and on November 20, 2003 for assault with intent to cause physical injury. The AAO, in dismissing the appeal on May 15, 2006, concluded that the applicant had been convicted of two misdemeanors.¹ The AAO, upon a *de novo* review, also dismissed the appeal because the applicant had failed to submit the court disposition for her arrest on December 20, 2003 for forgery.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) requires that 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.

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. § 103.8(b).

Pursuant to 8 C.F.R. § 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

The AAO rendered its decision on May 15, 2006. This motion, dated July 18, 2012, was received on July 21, 2012, over six years after the date of the AAO's decision. The applicant has not demonstrated that the delay was reasonable and beyond her control. The motion is untimely.

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

¹ The AAO determined at the time that the petit larceny charge was reduced to unlawfully using slugs in the second degree, a misdemeanor under NYPL § 170.55. The AAO has since determined that the applicant received adjournment in contemplation of dismissal under NYCPL §170.55. This error, however, did not affect the outcome of the AAO's decision and has not prejudiced the applicant as the applicant had failed to submit all the requested court dispositions.

allotted time period. Accordingly, the motion to reopen 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 May 15, 2006, is affirmed.