



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE:

JUL 21 2014

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 matter is now before the AAO on a motion to reopen and a motion to reconsider. The motion will be dismissed.

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.

On July 18, 2012, the director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States. The AAO, in dismissing the appeal on September 4, 2013, concurred with the director's findings.

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 September 4, 2013. This motion, dated October 2, 2013, was received on October 7, 2013. However, it was rejected as the date on the financial instrument was not current.¹ The Form I-290B, Notice of Appeal or Motion, was returned to applicant on October 10, 2013. The Form I-290B was received on October 22, 2013, 48 days after the date of the AAO's decision. The applicant has not demonstrated that the delay was reasonable and beyond his control. The motion is untimely.

Assuming, arguendo, the financial instrument had been accepted on October 7, 2013, the motion would still have been dismissed by the AAO. Counsel indicated on motion that the applicant had filed a petition for Writ of Coram Nobis before the Maryland District Court, and that the record would be supplemented upon receipt of the District Court's decision. The regulations, however, do not provide for the extension of time to supplement the record on motion, but require documentary evidence to be submitted with the motion. 8 CFR 103.5(a)(2).

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 a properly filed motion was not filed

¹ Counsel indicated that the year on the financial instrument was poorly written but it was not dated in 2010.

within the allotted time period. 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 September 4, 2013, is affirmed.