

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M1



FILE:



OFFICE: Vermont Service Center

DATE: NOV 06 2007

[EAC 02 244 53158]

[EAC 07 152 50398 motion]

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

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.

The director denied the application because the applicant had failed to establish a qualifying continuous residence and physical presence during the required periods.

The appeal from the director's decision was dismissed on November 20, 2006, after the Chief of the AAO also concluded that the applicant had failed to establish her eligibility for TPS. On motion to reopen, the applicant addresses a motion to the Board of Immigration Appeals (BIA), and reasserts her claim of eligibility for TPS.

The BIA does not have jurisdiction over an appeal to a TPS application. Any appeal or motion must be filed at the service center where the original decision was made, which is to be forwarded to the AAO.

A motion to reopen or reconsider must be filed within thirty days of the underlying decision, except that failure to file during this period may be excused at the Service's discretion 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 mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

The previous decision from the AAO was dated November 20, 2006. Any motion to reopen must have been filed within thirty days after service of the decision. 8 C.F.R. § 103.5(a)(1)(i). Coupled with three days for mailing, the motion, in this case, should have been filed on or before December 26, 2006. The motion to reopen was received on April 12, 2007.

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 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 to reopen is dismissed. The previous decision of the AAO dated November 20, 2006, is affirmed.