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**U.S. Citizenship  
and Immigration  
Services**

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FILE:



Office: VERMONT SERVICE CENTER

Date: **NOV 18 2005**

[EAC 03 249 54568]

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:

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Canada, who is seeking Temporary Protected Status (TPS), as a national of EL Salvador, under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because he found the applicant had not established his eligibility for TPS as a national of El Salvador who had not been firmly resettled in another country prior to arriving in the United States.

On appeal, counsel for the applicant submits a brief statement and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2(a), provide that an applicant is eligible for Temporary Protected Status only if such alien establishes that he or she:

Is a national of a foreign state designated under section 244(b) of the Act;....

An alien shall not be eligible for Temporary Protected Status if the Attorney General finds that the alien was firmly resettled in another country prior to arriving in the United States. Sections 244(c)(2)(B)(ii) and 208(b)(2)(A)(vi) of the Immigration and Nationality Act (the Act).

As defined in 8 C.F.R. § 208.15, an alien is considered to be firmly resettled if, prior to arrival in the United States, he or she entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement unless he or she establishes:

(a) That his or her entry into that country was a necessary consequence of his or her flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that country; or

(b) That the conditions of his or her residence in that country were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled. In making his or her determination, the asylum officer or immigration judge shall consider the conditions under which other residents of the country live; the type of housing, whether permanent or temporary, made available to the refugee; the types and extent of employment available to the refugee; and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation that includes a right of entry or reentry, education, public relief, or naturalization, ordinarily available to others resident in the country.

At the time of filing his TPS application, the applicant indicated that he was a dual national of Canada and El Salvador. In support of the application, the applicant submitted a photocopy of his Canadian birth certificate and a photocopy of the identification page from his Canadian passport. He also submitted a partial photocopy of a document, an El Salvadoran personal identification card (*cédula*), that did not contain an identifying name, photograph or fingerprint. The document contained a hand-written notation, in English, that “a person borned

[sic] of El Salvadoran mother, this person is Salvadorian, too.” In a letter dated December 28, 2003, the applicant’s mother stated that the family’s address prior to arriving in the United States was [REDACTED]

On appeal, counsel asserts that the applicant is a citizen of El Salvador because his mother and father are both citizens of El Salvador. Counsel further asserts that, in the interest of justice and for humanitarian reasons, the applicant should be granted TPS because he and his parents never resettled in Canada, have been residing in the United States since 1995, and have no intention of returning to Canada. In support of the appeal, counsel submits photocopies of Employment Authorization Documents (EADs) issued to the applicant’s parents, indicating that they are both TPS registrants.

A review of the record reflects that the applicant is a Canadian citizen based upon his birth there on July 12, 1988, and that he resided in that country until his arrival in the United States with his parents in 1995. Although the applicant’s parents are TPS registrants, who are both natives and citizens of El Salvador, the applicant has failed to submit evidence to establish that he is a dual national of El Salvador. Canada is not a designated foreign state under Section 244 of the Act. Even if the applicant were a dual-national of Canada and El Salvador, it appears that he was firmly resettled in Canada prior to his arrival in the United States.

Based on the above discussion, it is concluded that the applicant has not established that he is a national of a designated TPS country, or that he was not firmly resettled in another country prior to his arrival in the United States. Consequently, the director’s decision to deny the application will be affirmed.

Additionally, the General Counsel, in GENC\O Op. 92-34 (August 7, 1992), concluded that CIS may, in the exercise of discretion, deny TPS in the case of an alien who, although a national of a foreign state designated for TPS, is also a national of another foreign state that has not been designated for TPS. The General Counsel explains that “TPS is not a provision designated to create a general right to remain in the United States. Rather, the statute provides a regularized means of granting haven to aliens who, because of extraordinary and temporary circumstances, cannot return to their home country in safety. See *id.* 244A(b)(1)(A), (B), and (C), 8 U.S.C. § 1254(b)(1)(a), (b), and (c).”

An alien applying for Temporary Protected Status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

**ORDER:** The appeal is dismissed.