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FILE: [REDACTED] OFFICE: Vermont Service Center DATE: APR 25 2008  
[EAC 03 071 52432]  
[EAC 08 002 54901, motion]

INRE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:  
[REDACTED]

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.

  
for Robert P. Wiemann, Chief  
1/ Administrative Appeals Office

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

The applicant is a native and 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 record reveals that the applicant filed a TPS application within the initial registration on September 9, 2002, under Citizenship and Immigration Services (CIS) receipt number EAC 03 071 52432. The director denied the application on July 28, 2003, after determining that the applicant had failed to establish she had continuously resided in the United States since February 13, 2001, to the date of filing the application. A subsequent appeal was dismissed by the Chief of the AAO on July 23, 2007, after he concluded that, in addition to her failure to establish her continuous residence, the applicant had also failed to establish her national identity and her continuous physical presence in the United States from March 9, 2001, to the date of filing her TPS application.

On motion to reopen, counsel for the applicant asserts that the applicant is eligible for TPS and submits additional evidence.

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

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
  - (2) During any subsequent extension of such designation if at the time of the initial registration period:
    - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;

(ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;

(iii) The applicant is a parolee or has a pending request for reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The designation of TPS for El Salvadorans has been extended several times, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

On motion to reopen, counsel for the applicant asks CIS to reconsider and approve the case and submits an employment letter dated September 22, 2007, from \_\_\_\_\_, Owner of \_\_\_\_\_

The letter from \_\_\_\_\_ provides some of the basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i); specifically a residence address for the applicant; however, the letter from \_\_\_\_\_ is not notarized. In addition, it is reasonable to expect that the applicant would have some type of contemporaneous evidence, such as check-stubs or earnings statements, rent receipts or bank records to support her claim; however, no such evidence has been provided. Furthermore, it is noted that while the applicant claims to have resided in the United States since 1999; the record contains her TPS re-registration application on which she stated that her children, including a daughter born in June 2000 and a son born on April 16, 2002, reside in El Salvador. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the inconsistency. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it

must be concluded that the applicant has failed to establish that she has met the criteria described in 8 C.P.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

The applicant has submitted a copy of a *Cedula De Identidad Personal* bearing her photograph and an English translation showing that the applicant is a national of Salvador.

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 applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. 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 July 23, 2007, is affirmed.