U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: OCT 23 2008

[SRC 01 222 62419]

IN RE: 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 Vermont Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 director determined that the applicant was ineligible for TPS because it appeared that he had firmly resettled in another country. The director, therefore, withdrew the applicant's TPS.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8.C.F.R. § 244.14(a)(1).

On appeal, counsel reasserted the applicant's claim of eligibility. The applicant also submits evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States.

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.

The record indicates that the applicant attested in a sworn statement, dated November 29, 2001 to being a Canadian citizen. The record also contains a copy of the applicant's Canadian passport issued on August 19, 1998. On November 29, 2001, the applicant attempted entry into the United States at Intercontinental Airport, Houston, Texas. At that time, the applicant was questioned by immigration officials who executed a sworn statement. In his sworn statement, the applicant stated that he is a Canadian citizen. The applicant also attested

that he had resided in Canada from 1986 until the end of 1997. He also stated that he was employed while he lived in Canada. It is also worth noting that the record contains a copy of the applicant's Canadian passport, issued on August 19, 1998, that he presented to the immigration officials upon his entry to the United States. In addition, a review of his Canadian passport reflects that he entered the United States on two previous occasions on September 17, 1998, and on June 21, 2000, presenting himself as a Canadian citizen.

On appeal, counsel contends that the director failed to show how the applicant was firmly resettled in Canada, and thus is ineligible for TPS. However, in his sworn statement, the applicant attested that he lived in Canada from 1986 until the end of 1997. The applicant also clearly stated that he was a Canadian citizen. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). Counsel also states that the applicant entered the United States in April 1998. However, the applicant, on his TPS application, indicates that he entered the United States in 1999. This discrepancy has not been satisfactorily explained. 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Beyond the decision of the director, it is noted that the applicant has provided insufficient evidence to establish his qualifying continuous residence since February 13, 2001 and continuous physical presence from March 9, 2001 to the filing date of the TPS application. Therefore, the application must be denied for these reasons as well.

The burden of proof is upon the applicant to establish that she meets the above requirements. Counsel's statement and the evidence provided on appeal do not overcome the adverse evidence in the record. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

An alien applying for temporary protected status has the burden of proving that 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.