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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]

OFFICE: California Service Center

DATE:

JUN 22 2007

[WAC 05 221 76203]

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 office that originally decided your case. Any further inquiry must be made to that office.

*Cindy M. Gomez for*

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

With a subsequent TPS application the applicant has submitted a new Form G-28, Notice of Entry of Appearance as Attorney or Representative, which neither the applicant nor the attorney or representative has signed. The regulation at 8 C.F.R. § 103.2(a)(3) provides that: "Where a notice of representation is submitted that is not properly signed, the application or petition will be processed as if the notice had not been submitted." Accordingly, the attorney of record pursuant to the previously submitted Form G-28 remains unchanged.

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 record reveals that the applicant filed an initial Form I-821, Application for Temporary Protected Status, at the Vermont Service Center (VSC) on September 9, 2002 [EAC 03 034 51128]. The director denied that application on July 31, 2003, after the applicant failed to respond to a request for evidence that she had been continuously resident in the United States since February 13, 2001, and continuously physically present in the United States since March 9, 2001, as required for TPS applicants from El Salvador.

The applicant filed a late appeal on December 4, 2003, accompanied by six affidavits – four from individuals who claim to have known the applicant in the United States since early February 2001, and two from individuals who claim to have known the applicant in the United States since May 14, 2001, and June 20, 2002, respectively. In a decision dated December 13, 2004, the VSC Director accepted the applicant's filing as a motion to reopen, but determined that the affidavits had little evidentiary value and failed to establish that the applicant met the continuous residence (since February 13, 2001) and physical presence (since March 9, 2001) requirements for TPS. After reviewing the entire record, the director concluded that the grounds of denial had not been overcome and affirmed the previous decision denying the application.

The applicant filed the current TPS application, identified as an application for re-registration of TPS, at the California Service Center on May 9, 2005. The CSC Director denied the application on August 16, 2005, on the ground that the applicant's initial TPS application had been denied, thereby making the applicant ineligible to re-register for TPS.

The applicant filed a timely appeal, asserting that the director erred in stating that the applicant had not established prima facie eligibility for Temporary Protected Status because she had been granted permission to work from January 21, 2003, to March 9, 2005. Photocopies were submitted of three expired Employment Authorization Cards with validity periods of January 21 – September 9, 2003; February 26 – April 26, 2004; and April 27, 2004 – March 9, 2005, respectively.

Each of these cards was issued to the applicant after the approval of a Form I-765, Application for Employment Authorization, based on her pending application for TPS. Once the TPS application, Form I-821, was definitively denied by the VSC Director on December 13, 2004, however, and the applicant did not appeal within the 33-day period prescribed in the regulations, the applicant was no longer eligible for employment authorization and did not receive another extension. Thus, employment authorization is dependent upon a pending or approved TPS

application, but does not indicate that the applicant has established prima facie eligibility for TPS. Accordingly, the applicant's argument that her employment authorization is evidence of her prima facie eligibility for TPS is without merit.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. See 8 C.F.R. § 244.17.

In this case, the applicant has not previously been granted TPS. Therefore, she is not eligible to re-register for TPS. Nor is there any evidence in the file to suggest that the applicant is eligible for late registration for TPS under 8 C.F.R. § 244.2(f)(2). Accordingly, the director's decision to deny the application will be affirmed.

The applicant's file includes a Form I-213, Record of Deportable/Inadmissible Alien, prepared by a U.S. Border Patrol Agent on May 16, 2001, which states that the applicant was apprehended that day by a sheriff's deputy at or near Lubbock, Texas, and admitted to Border Patrol Agents that she entered the United States from Mexico on or about May 1, 2001, near the Nogales, Arizona, port of entry. Later, when she applied for TPS in September 2002, the applicant stated that she had entered the United States on February 1, 2001. The only evidence in the record of the applicant's presence in the United States prior to May 2001 are the previously discussed affidavits, submitted in 2003, in which four of the affiants declare that they met the applicant in early February 2001. All of the affidavits are from individuals who live in and around Boston, Massachusetts, however, and none of the four affiants who claims to have known the applicant since early February 2001 explains how he could have met the applicant on, or within a few days of, February 1, 2001, the date she claims to have entered the United States at Nogales, Arizona.

It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. See *Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). Moreover, doubt cast on any aspect of the petitioner's evidence reflects on the reliability of the petitioner's remaining evidence. See *id.*

With specific regard to TPS applications, the regulation at 8 C.F.R. § 244.9(b) states that the sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements.

The applicant has failed to submit adequate documentary evidence to satisfy her burden of proof that she has resided continuously in the United States since February 13, 2001, and been continuously physically present in the United States since March 9, 2001, as required for TPS applicants from El Salvador.

It is noted that previous charging documents have been issued, but to date the applicant has not been placed in final removal proceedings.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for Temporary Protected Status, or TPS, 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 that burden.

**ORDER:** The appeal is dismissed.