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FILE: [REDACTED] OFFICE: California Service Center DATE: **JUL 27 2007**
[WAC 05 117 72558 –
as it relates to SRC 03 011 54274]

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 California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The re-registration application was denied by the Director, California Service Center (CSC). It is now on appeal before the Administrative Appeals Office (AAO). The director's decision will be withdrawn and the matter remanded for further consideration and action.

The applicant is 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 CSC Director denied the re-registration application on the ground that the applicant had not established prima facie eligibility for TPS and had not been granted such status, thereby making her ineligible to re-register for TPS under section 244 of the Act.

On appeal, counsel asserts that the applicant did not receive any notice that her TPS had been withdrawn prior to filing her re-registration application. Counsel submits a copy of the applicant's TPS approval notice, as well as a copy of her identification card issued by the State of Arkansas. Counsel requests that the applicant's case be reconsidered.

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.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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.

El Salvadoran nationals applying for TPS must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002.

The record shows that the applicant filed her initial Form I-821, Application for Temporary Protected Status [SRC 03 011 54274], at the Texas Service Center on September 9, 2002, the last day of the initial registration period. On January 11, 2003, the TSC advised the applicant that it intended to deny the application unless she submitted documentary evidence showing that she had resided continuously in the United States since February 13, 2001, and been continuously physically present in the United States since March 9, 2001. The applicant – who claims to have entered the United States without inspection on September 20, 2000 – responded with a series of letters and affidavits from acquaintances in the United States. On February 17, 2004, the TSC approved the application for TPS and sent the applicant an Approval Notice (Form I-797A) with a validity period of February 17, 2004 – March 9, 2005.

The applicant filed the current Form I-821 [WAC 05 117 72559], which she identified as an application to re-register for TPS, with the California Service Center on January 25, 2005. The CSC Director denied the application on July 22, 2005, stating that because the applicant did not establish her prima facie eligibility for TPS and had not been granted such status, she was ineligible to re-register for TPS.

On appeal counsel asserts that the applicant never received notice that her TPS had been withdrawn. Counsel points to the TSC Approval Notice stating that TPS had been approved on February 17, 2004, and was valid until March 9, 2005. Counsel contends that the re-registration application, timely filed in January 2005, should be reconsidered. The AAO agrees with counsel.

The CSC Director's denial of the re-registration application is based on a withdrawal of the applicant's previously granted TPS. The file includes a TSC document entitled Notice of Decision to Withdraw, which cites the director's authority under 8 C.F.R. § 244.14(a)(1) to 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. The decision states that the documentation submitted by the applicant in response to the request for evidence on January 11, 2003, failed to establish that she met the continuous physical presence and continuous residence requirements of 8 C.F.R. § 244.2(b) and (c), as required for the applicant to qualify for TPS. The decision concludes by withdrawing the applicant's TPS. According to Citizenship and Immigration Services (CIS) electronic records, the applicant's TPS was revoked on February 20, 2004. The decision in the file is undated, however, and there is no notice or other confirmation in the record that it was ever sent to the applicant. While CIS records confirm (consistent with the Approval Notice received by the applicant) that TPS was approved on February 17, 2004, and that notification was sent to the applicant the same day, CIS records do not indicate that any notice was sent to the applicant when TPS was revoked on February 20, 2004.

Based on the foregoing analysis, the AAO concludes that the Notice of Decision to Withdraw was never sent to the applicant and that the applicant had no notice that her TPS was withdrawn, or the reasons for withdrawal, at the time she filed her application to re-register for TPS in January 2005. The TSC Director's failure to notify the applicant that her TPS had been withdrawn in February 2004 precluded the applicant from appealing that ruling and submitting additional evidence. The subsequent decision by the CSC Director in July 2005 denying the re-registration application stated simply that the applicant was ineligible for re-registration because she had not established prima facie eligibility and had not been granted TPS. The decision did not acknowledge that TPS had previously been granted and did not explain the basis for the TSC Director's withdrawal of TPS. Since the applicant as of July 2005 still had not received the Notice of Decision to Withdraw, she did not know that it was based on failure to establish her continuous residence and physical presence in the United States.

In view of these procedural errors, the matter will be remanded to the CSC Director for remedial action. The decision on the re-registration application will be withdrawn. The CSC Director shall send the applicant the previously prepared Notice of Decision to Withdraw her TPS, which affords the applicant a 30-day appeal period.¹ Upon final adjudication of the initial application, including the decision regarding the withdrawal of TPS, the CSC Director shall consider the re-registration application and issue a new decision.

As always in these proceedings, the burden of proof rests solely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The decision on the re-registration application [WAC 05 117 72558] is withdrawn and remanded to the CSC Director. Before entering a new decision on the re-registration application, the CSC Director shall complete the

¹ The TSC Director found that the documentation submitted in response to the request for evidence on January 11, 2003, failed to establish that the applicant met the continuous physical presence and continuous residence requirements of 8 C.F.R. § 244.2(b) and (c), as required for her to qualify for TPS. It is noted that none of the materials submitted by the applicant accorded with the types of documentation listed in the notice as "acceptable" or "satisfactory." Letters from acquaintances are not, by themselves, persuasive evidence of an alien's residence and physical presence in the United States.

adjudication of the initial TPS application [SRC 03 011 54274] by sending the applicant the previously prepared Notice of Decision to Withdraw her TPS, affording her the opportunity to appeal and submit additional evidence, and if necessary issuing a new decision. Once the adjudication of the initial application is complete, the CSC Director shall issue a new decision on the re-registration application.