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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
[EAC 01 190 55572]

Office: VERMONT SERVICE CENTER

Date: APR 02 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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

The applicant is stated 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 a TPS application during the initial registration period on April 30, 2001, under receipt number EAC 01 190 55572. The Director, Vermont Service Center, approved that application on October 10, 2001.

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).

The director withdrew the applicant's TPS because the applicant failed to maintain continuous residence and continuous physical presence in the United States during the qualifying period. The director also determined that the applicant was firmly resettled in Canada and therefore not eligible for TPS.

On appeal, counsel contends that the applicant is a Salvadoran national and has resided in the United States since 1999. According to counsel, during the applicant's last visit to Canada she "did not enter with or while in Canada receive 'an offer of permanent residence status, citizenship, or some other type of resettlement.' Although the same cannot be said for prior visits to Canada from El Salvador, the statutorily (stet) language, in the instant case, does not bar applicant's TPS eligibility."

Pursuant to a letter dated April 3, 2007, the applicant was requested to submit a list of all entries into and exits from the United States, to submit all pages of her most recent passport and to submit proof of her Canadian citizenship. In response, the applicant submitted a list showing multiple entries and exits from the United States, her Canadian passport, a Canadian Social Insurance Card and her Certificate of Canadian Citizenship. As pointed out by the director, while under TPS, the applicant may not depart the United States without the prior approval of the Secretary of Homeland Security. United States Citizenship and Immigration Services (USCIS) records do not indicate that the applicant requested or was granted advance parole. The director therefore determined that the applicant had failed to maintain continuous residence and continuous physical presence in the United States during the qualifying period.

The director also determined that the applicant was ineligible for TPS because she had firmly resettled in another country. 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.

Contrary to counsel's contention, the record indicates that the applicant entered Canada in 1988 as a refugee, and in 1995, she naturalized as a Canadian citizen. Counsel's argument that the applicant did not receive an offer of permanent resident status, citizenship or some other type of resettlement on her last visit to Canada is specious. At that point she was already a naturalized citizen and firmly resettled in Canada. Further, the record does not contain sufficient evidence that the applicant maintained continuous residence and continuous physical presence in the United States during the requisite period. Consequently, the director's decision to withdraw Temporary Protected Status will be affirmed.

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 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.