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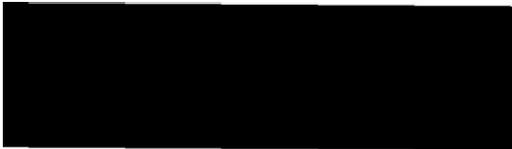
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **AUG 04 2009**  
[EAC 08 045 74481]

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:



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

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 application was denied 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 she had firmly resettled in another country.

On appeal, counsel stated that the director erred in denying the application and reasserted the applicant's claim of eligibility. According to counsel, the regulations regarding firm resettlement applied to asylum and not TPS.

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 moved to Toronto, Canada in February 1983 and resided there until her arrival in the United States in June 1990. Counsel and the applicant failed to provide any documentary evidence to support the claim that the applicant had not obtained lasting resident or citizenship status as a result of her stay in Canada. The assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988).

In addition, counsel contends that being “firmly resettled” in another country is only for asylum purposes and does not pertain to TPS. However, Section 244(c)(2)(B)(ii) explicitly applies the requirements of Section 208(b)(2)(A)(vi) of the Immigration and Nationality Act (the Act) to applicants for Temporary Protected Status.

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.

Beyond the director’s decision, it is noted that a Federal Bureau of Investigation (FBI) fingerprint results report indicates that the Las Vegas, Nevada Police Department arrested the applicant on March 21, 2004 for “Child Neg W/Sub Bodily Harm F.” CIS records indicate that the applicant pled guilty and was convicted of “Child Abuse and Neglect,” a misdemeanor. An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act. *Guerrero de Nodahl v. INS*, 407 F.2d 1405 (9th Cir. 1969), held a conviction under the Calif. Penal Code 273(d) for the infliction of any cruel or inhuman corporal punishment upon a child is a CIMT. *Accord Garcia v. Attorney General*, 329 F.3d 1217 (11th Cir. 2003), held that the Florida offense of aggravated child abuse was a CIMT.

Furthermore, it is noted that although the applicant has submitted a copy of a birth certificate with English translation, it was not accompanied by photo identification. The applicant has also failed to provide a passport or any national identity document from the alien’s country of origin bearing photo and/or fingerprint to establish his nationality and identity. Therefore, the application must be denied on these bases as well.

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.