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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:

[WAC 06 046 70310]

Office: VERMONT SERVICE CENTER

Date:

MAY 01 2009

IN RE:

Applicant:

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 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 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 November 15, 2005, under receipt number WAC 06 046 70310. The Director, California Service Center, approved that application on May 25, 2006.

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 record reflects that on March 18, 2008, the director notified the applicant through her previous counsel that United States Citizenship and Immigration Services (USCIS) records indicated the applicant entered the United States on July 30, 2004, and that her TPS application may have been approved in error. The applicant was given 30 days to submit evidence to establish continuous residence and continuous physical presence in the United States during the requisite periods. The record does not reflect that the applicant or her attorney responded to the notice.

The director withdrew temporary protected status because the applicant failed to establish she had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, counsel for the applicant claims that the applicant never received the request for additional evidence and that the applicant's mother bestowed prima facie eligibility for TPS upon the applicant. However, USCIS records indicate that the request for additional evidence was sent to the applicant's previous counsel of record, and USCIS is not responsible for the action or inaction of the applicant's representative.

Furthermore, while regulations may allow children of TPS beneficiaries to file their applications after the initial registration period had closed; these regulations do not relax the requirements for eligibility for TPS; the child is still required to meet the residence and physical presence requirements as provided in 8 C.F.R. §§ 244.2(b) and (c). By her own admission, as well as that of her counsel, the applicant arrived in the United States on July 30, 2004, subsequent to the eligibility period. Therefore, she cannot satisfy the residence and physical requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for 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.