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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]
[EAC 01 241 50659]

Office: VERMONT SERVICE CENTER

Date: MAR 04 2005

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied 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 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 denied the application because the applicant failed to establish his continuous residence and his continuous physical presence in the United States during the requisite periods.

On appeal, counsel provides a brief and additional documentation in support of the appeal.

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 designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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 issues raised by the director to be addressed in this proceeding are whether the applicant has established his continuous residence and his continuous physical presence in the United States during the required timeframes.

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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period. The record reveals that the applicant filed his application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on August 3, 2001.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). 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. 8 C.F.R. § 244.9(b).

In a notice of intent to deny, dated April 25, 2003, the applicant was requested to submit evidence to establish his continuous physical presence in the United States during the requisite timeframes. In response, the applicant submitted: copies of earnings statements for [REDACTED] from WM L Griffith & Co., for the pay periods ending March 3, 2001, March 17, 2001, March 24, 2001, March 31, 2001, April 14, 2001, and April 21, 2001; copies of earnings statements for [REDACTED] from WM. L. Griffith & Co., for July 11, 2002 and July 18, 2002; an "AFFIDAVIT OF IDENTITY," dated May 8, 2003, from the applicant, which states that "[REDACTED] identified with Alien [REDACTED] domiciled at [REDACTED] [REDACTED] declare under oath, that I have worked for WM. L. Griffith & Company using the name of [REDACTED]" a copy of Form 1040, U.S. Individual Income Tax Return, for the year 2001, which is not signed by the applicant or certified by the Internal Revenue Service; and, a photocopy of the photo and biographical page of the applicant's El Salvadorian passport issued in Washington, DC on October 30, 2001.

The director found that the documentation submitted was not sufficient in establishing the applicant's continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The director denied the application on July 29, 2003.

On appeal, counsel states that the applicant arrived in the United States on July 17, 1998, without inspection. Counsel also states that the applicant was arrested by the Immigration and Naturalization Service (INS) and placed in removal proceedings, and that after his release from INS custody he has always lived in Virginia and never left the United States. Counsel contends that given the applicant's date of entry into the United States and his nationality; he is qualified to obtain the benefits of the TPS program. Counsel also contends that it is "unconceivable" to expect that TPS applicants would be able to fully document their entries, residence or physical presence with hard evidence. Counsel further contends that the applicant has made every effort to obtain the required evidence, but cannot provide evidence that does not exist.

Counsel submits: a copy of an earnings statement for the applicant from the aforementioned WM. L. Griffith & CO., for the pay period ending August 28, 1999; a copy of a page of the "WM. L. Griffith & CO. EMP. SAV. & RET. PLAN" with the applicant's name and address on the page; a copy of the INS Form I-862, Notice to Appear; a copy of a letter dated May 18, 1999, from the INS District Director, Arlington, Virginia, requesting that the applicant report for deportation; a rent receipt dated November 6, 1999; a Wage and Tax Statement for the year 1998, issued to the applicant and showing wages, tips, and other compensation as \$4,896; and, a copy of what appears to be a receipt dated December 24, 2001.

The documentation contained in the record and provided on appeal are not sufficient in demonstrating the applicant's continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The earnings statements merely cover approximately three months of the requisite timeframe, the 2001 income tax return is not signed by the applicant or certified by the Internal Revenue Service and, therefore, cannot be given much weight, and the 1998 Wage and Tax Statement

covers a period prior to the requisite timeframes. The INS Form I-862, Notice to Appear establishes the applicant's date of entry into the United States, however, the remaining documentation submitted on appeal, and contained in the record is sparse and does not adequately demonstrate the applicant's continuous physical presence and his continuous residence in the United States during the requisite timeframes. Counsel's simply stating that the applicant has never left the United States, without supporting documentary evidence to cover the majority of the requisite timeframes, is not sufficient for the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The applicant has failed to provide sufficient evidence to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will be affirmed.

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.