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U.S. Citizenship  
and Immigration  
Services

[Redacted]

FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: SEP 11 2008

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 office that originally decided your case. Any further inquiry must be made to that office.

Handwritten signature of Robert P. Wiemann.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nicaragua 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 evidence furnished by the applicant did not establish that she was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. She noted that although the application shows that the applicant entered the United States on December 22, 1998, the arrival/departure records show that she last entered on June 20, 1999; therefore, the applicant failed to establish that she had continuously resided in the United States since December 30, 1998, and had been continuously physically present since January 5, 1999. The director, therefore, denied the application.

On appeal, counsel asserts that the applicant entered the United States on December 22, 1998 as a B1/B2 visitor for pleasure. He further asserts that the applicant alleges that she meets all the requirements for TPS because she is a citizen of Nicaragua and she also meets the residence and physical presence for dates specified by the Attorney General. Counsel, however, does not address the director's finding that the applicant last entered the United States on June 20, 1999.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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 condition described in paragraph (f)(2) of this section.

The term *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 and since December 30, 1998. 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 term *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 and since January 5, 1999. 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 term *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.

The record reflects that the applicant filed her TPS application on July 1, 2002. The application shows that the applicant entered the United States on December 22, 1998 as a B-2 visitor for pleasure. She submits a copy of her passport containing an admission stamp to support her claim. Additionally, the Service departure/arrival records show that the applicant was admitted to the United States with a B-1 visa (visitor for business) on June 20, 1999, and was authorized to remain until July 19, 1999.

In order to qualify for late registration, the applicant must provide evidence that, at the time of the initial registration period of January 5, 1999 through August 20, 1999, she was, among other criteria listed by the director, and as described in 8 C.F.R. § 244.2(f)(2) (listed above), in a valid nonimmigrant status or had been granted voluntary departure or any relief from removal during the initial registration period. The director maintained that if the qualifying condition or application has expired or been terminated, the individual must file

within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. *See* 8 C.F.R. 244.2(3)(g).

The record reflects that the applicant was admitted to the United States as a B-2 nonimmigrant visitor on December 22, 1998. While the applicant failed to submit evidence to show the date of expiration of her authorization to stay in the United States, it appears that she departed from the United States before June 20, 1999, since the CIS records indicate she was again admitted into the United States on that date as a B-1 nonimmigrant visitor for business. The applicant was authorized to remain in the United States to conduct her business until July 19, 1999. The applicant did not file her application within the 60-day period following the expiration of her nonimmigrant status. Nor does she meet the requirement that she must have resided in the United States for the entire period since December 30, 1998.

The applicant, therefore, has failed to establish that she met the qualification for late initial registration, and to overcome the findings of the director pursuant to 8 C.F.R. § 244.2(f)(2). The director's decision to deny the decision on this ground will be affirmed.

Moreover, since the applicant apparently departed from the United States sometime after December 22, 1998, and did not reenter until June 20, 1999, she has failed to establish that she satisfies the residence and physical presence criteria described in 8 C.F.R. §§ 244.2(b) and (c). The applicant has failed to present any evidence suggesting that her absence was brief, casual, and innocent. Consequently, the director's decision to deny the decision on this ground will also be affirmed.

The burden of proof is upon the applicant to establish that 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.