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U.S. Department of Homeland Security  
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Washington, DC 20529



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**



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FILE:



Office: TEXAS SERVICE CENTER

Date:

JUL 01 2005

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: SELF-REPRESENTED

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.

*for*  
A handwritten signature in cursive script, appearing to read "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 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 denied the application because the applicant failed to establish his continuous residence and his continuous physical presence in the United States during the requisite timeframes.

On appeal, the applicant's mother provides a brief statement and additional documentation.

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 issue raised by the director to be addressed in this proceeding is whether the applicant has been continuously residing and has been continuously physically present in the United States during the requisite 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 Nicaragua must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present in the United States since January 5, 1999.

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).

The initial registration period for Nicaraguans was from January 5, 1999, through August 20, 1999. The record reflects that the applicant filed his initial application with Citizenship and Immigration Services (CIS), on July 19, 2001. It is noted that the record indicates that the applicant entered the United States on March 30, 2000.

The director determined that since the applicant entered the United States on March 30, 2000, more than one year after the onset of the qualifying timeframes, the applicant is unable to demonstrate his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999.

On appeal, the applicant's mother states that her son "filed on July 2001 an application for a TPS as a late registration after received a notice from TSC in reference with his Nacara (Nicaraguan and Central American Relief Act) application." The applicant's mother resubmits: a copy of her permanent resident card; a copy of her son's Nicaraguan birth certificate accompanied by an English translation; a copy of Form I-94, Arrival and Departure Record, showing that on March 30, 2000, the applicant was paroled into the United States until May 29, 2000; a copy of the applicant's passport; and, a copy of a letter, dated January 23, 2001, from the Texas Service Center, indicating the following:

We are returning your application to Adjust Status to that of Lawful Permanent Resident (I-485) under the Nicaraguan and Central American Relief Act (NACARA) because it was received after the filing deadline of March 31, 2000. If you also submitted an application for Advance Parole (I-131) and/or an application for Employment Authorization (I-765), we are returning it/them as well.

The INS held your application based on information that Congress would be extending the program in relatively short order. Based on new information, it now appears that if the program will be extended or re-instituted, it will be some time before that happens. If the NACARA program is extended or re-instituted, you may reapply at that time.

None of the documentation submitted on appeal demonstrates that the applicant has been continuously residing in the United States since December 30, 1998, and that he has been continuously physically present in the United States since January 5, 1999. In addition, as the record demonstrates that the applicant did not enter the United States until March 30, 2000, more than one year after the onset of the qualifying timeframes, it would be impossible for the applicant to provide evidence of his continuous physical presence and his continuous residence in the United States during the requisite timeframes. The applicant has not met the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant has not demonstrated that he is eligible to file for late registration. As previously stated, the initial registration period for Nicaraguans was from January 5, 1999, through August 20, 1999. The applicant did not enter the United States until March 30, 2000, more than one year after the initial registration period. The applicant is not eligible for late registration under 8 C.F.R. §

244.2(f)(2), as he arrived in the United States subsequent to the eligibility period. Therefore, the application must also be denied for this reason.

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.