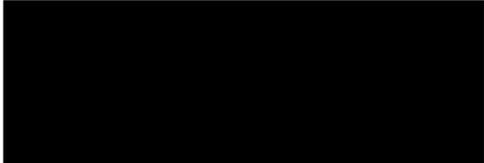




U.S. Citizenship
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Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **MAY 26 2006**
[SRC 03 178 54976]

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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the California Service Center. Any further inquiry must be made to that office.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application and a motion to reopen were denied by the Director, Texas Service Center. The matter 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 applying for 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 for TPS because the applicant failed to establish he was eligible for late initial registration.

On appeal, the applicant states that he has been living in this country since 1998. The applicant explains that he wants to live in this country in a legal status and that he wants the chance to pay his taxes and that he does not want to lose his opportunity for employment.

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 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.

Persons applying for TPS offered to Nicaraguans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present since January 5, 1999. The initial registration period for Nicaraguans was from January 5, 1999, through August 20, 1999. The record shows that the applicant filed his application with Citizenship and Immigration Services (CIS), on June 11, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

The burden of proof is upon the applicant to establish that he 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On August 15, 2003, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). In response to the director's request, the applicant provided no further documentation concerning late registration eligibility. The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on December 8, 2003.

It is noted that on his TPS application, the applicant indicates that he entered the United States in July 1994 without inspection but that his current status is that of an F-1 nonimmigrant student. The record contains no documentary evidence to show that the applicant has been or remains in nonimmigrant student status since his purported entry into the United States in 1996, or if and when that status terminated. To be eligible to apply under the late initial registration provisions of TPS, the applicant must demonstrate that he filed for TPS no later than 60 days from the termination of his status as a nonimmigrant student. He has not done so.

The record contains evidence the applicant has submitted in an attempt to establish his qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Application for Temporary Protected Status within the initial registration period. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS is affirmed for this reason.

It is noted that the applicant filed a Form I-589, Request for Asylum in the United States, on January 26, 1995. On June 12, 1995, the applicant was informed that his application for asylum had not been granted because he had failed to appear for his scheduled asylum interview, or failed to provide a competent interpreter for that interview. His case was referred to an Immigration Judge in Miami, Florida, and the applicant was informed that his asylum request would be considered again when he appeared before the immigration judge. The notice was returned undelivered. The record does not show that another hearing was scheduled. The applicant's asylum application was terminated on October 20, 1995.

Beyond the decision of the director, it is noted that the record reflects that on his Form I-821, Application for Temporary Protected Status, and on his Form I-765, Application for Employment Authorization, signed on June 5, 2003; the applicant stated that he entered the United States in July 1994. However, he also forwarded a copy of his Republic of Nicaragua passport issued to him in Nicaragua on January 29, 1999. The applicant's statement as to his date of entry and his submitted evidence showing he was issued a passport outside the United States subsequent to his claimed entry casts doubt upon the validity of the evidence forwarded by him for the record. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

It is determined that the applicant has provided insufficient evidence to establish his continuous residence and continuous physical presence during the requisite time periods. 8 C.F.R. § 244.2 (b) and (c). Therefore, the application cannot be approved for these reasons.

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.