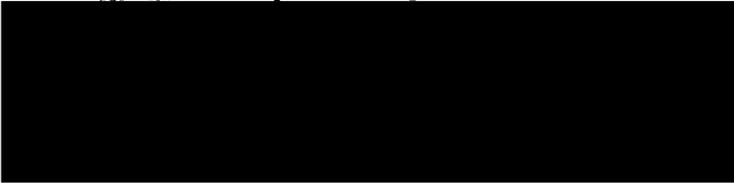




U.S. Citizenship
and Immigration
Services

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



ML

FILE: 
[WAC 05 146 75587]

Office: California Service Center

Date: APR 03 2007

IN RE: Applicant: 

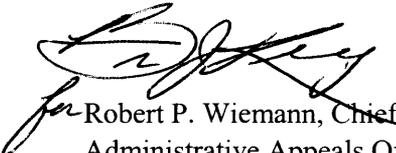
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

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


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) 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 record reveals that the applicant filed a late initial TPS application on February 23, 2005, under CIS receipt number WAC 05 146 75587. The director denied the application on May 23, 2006, due to abandonment. The director noted that the applicant failed to respond to a notice of intent to deny to submit evidence to establish his continuous residence in the United States, his continuous physical presence, eligibility for late initial registration, and his nationality and identity. The director also noted that the notice of intent to deny was mailed to the applicant's last known address, and was returned as undeliverable. A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision.

Pursuant to 8 C.F.R. § 103.5(a)(ii), jurisdiction to consider a motion to reopen/reconsider lies with the official who made the latest decision in the proceeding, which in this case is the director. It is noted, however, that the director gave the applicant appeal rights and forwarded the appeal to the AAO. Therefore, the AAO will consider 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 as 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.

Continuously physically present 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.

Continuously resided 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.

Brief, casual, and innocent absence 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 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. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until July 5, 2007, upon the applicant's re-registration during the requisite period.

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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he/she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse/child of an alien currently eligible to be a TPS registrant, and he/she 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).

With his TPS application, the applicant submitted his Nicaraguan birth certificate (in Spanish) without an English translation.

On appeal, counsel states that the applicant never received a letter requesting additional evidence. With the appeal, in an attempt to establish eligibility for TPS, counsel on behalf of the applicant submits the following:-

- A reference letter from [REDACTED] dated June 18, 2006, stating that the applicant has been a member of his church for nine years.;
- A reference letter from [REDACTED] stating that he has known the applicant since 1998;
- A Nicaragua Cedula, issued on May 17, 1995;
- Six OMS, one Western Union, and two Gueguense Express, Inc., money transfer receipts, dated in 1998 through 2003;
- A reference letter from a former employer, [REDACTED] stating that the applicant has been working with his company since June 1, 1999; and,
- His Nicaraguan birth certificate in Spanish, with an English translation.

However, this evidence does not mitigate the applicant's failure to file his Form I-821, Application for Temporary Protected Status, within the initial registration period.

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Consequently, for this reason, the director's decision to deny the application must be denied.

In addition, the applicant has failed to establish the requisite continuous residence in the United States, and continuous physical presence. It is noted that the reference letters regarding the applicant's claimed presence in the United States since 1998 are not supported by any reliable corroborative evidence. The evidence of record consists primarily of money transfer receipts, detailed above. These receipts carry little evidentiary weight and will not serve to establish the applicant's eligibility. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. The applicant has, therefore, not met the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, for these additional reasons, the director's decision to deny the application for temporary protected status must also 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.