



U.S. Citizenship
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Services

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FILE: [REDACTED] CALIFORNIA SERVICE CENTER
[WAC 06 123 70070]

Date: APR 27 2007

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

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 on appeal. The appeal will be dismissed.

The applicant claims to be 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 because he had not established that he had been continuously physically present in the United States since January 5, 1999.

On appeal, the applicant requests that his case be re-opened to give him the opportunity to be legal in this country. He states that he has answered all the requests that he has received from Citizenship and Immigration Services (CIS) and that since he came to the United States in 1998, he has never been in any kind of trouble nor has he ever been stopped by any official of CIS. The applicant further states that he left the United States on January 3, 2005 by crossing the Rio Grande again because his mother was very sick in the hospital as she had a heart attack and needed emergency surgery and that he returned the same way.

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 January 31, 2006.

Upon initial submission, the applicant submitted copies of receipts from firms such as Home Depot, Sears and Walgreens. On appeal, the applicant submitted additional receipts including four rent receipts dated August 1, 1998, January 1, 2000, February 5, 2002 and August 5, 2003 and three Western Union receipts dated April 5, 2001, May 15, 2003 and June 5, 2004. The majority of these receipts do not bear his name and therefore are of little probative value. The Western Union and rent receipts are not persuasive evidence of continuous residence or physical presence.

The record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated January 31, 2005 indicating that the United States Border Patrol apprehended the applicant on January 28, 2005 near Laredo, Texas, after he illegally entered the United States by crossing the Rio Grande River on that day. The applicant stated that he had left Nicaragua on January 7, 2005 to begin his journey to the United States. It is noted that on appeal, he states that he left the United States on January 3, 2005 by crossing the Rio Grande because his mother was very sick in the hospital as she had a heart attack and needed emergency surgery and that he returned to the United States the "same way." The applicant has submitted no evidence to substantiate that he was actually in the United States

prior to and on January 3, 2005. Even had he done so, he does not explain why he would have left the United States on January 3, 2005, traveled to Guatemala and then began his return journey two days later on January 5, 2005 as he claimed at his interview with a Border Patrol Officer on January 28, 2005.

It is noted that the record contains a Form I-296, Notice to Alien Ordered Removed/Departure Verification, dated January 31, 2005 verifying that the applicant was removed from the United States on March 11, 2005.

It is determined that the applicant has provided insufficient evidence to establish his continuous residence as determined by the CSC Director. 8 C.F.R. § 244.2(b). Therefore, the director's determination is affirmed for this reason.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish his eligibility for late registration. Furthermore, the applicant has provided insufficient evidence to establish that he is a national or citizen of Nicaragua. The record does not contain any photo identification such as a passport or national identity document to establish his nationality. 8 C.F.R. § 244.2(a) and § 244.9(a)(1). Furthermore, he has not documented his continuous physical presence for during the required time period. 8 C.F.R. § 244.2(c). Therefore, the application shall be denied for these reasons as well.

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.