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U.S. Citizenship
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FILE:



[EAC 06 258 75400]

Office: VERMONT SERVICE CENTER

Date: DEC 07 2007

IN RE:



APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act (the 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the approval of the application. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of Nicaragua who seeks 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 he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant asserts that he has been here continuously since 1997. He submits various documents.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 2009, upon the applicant's re-registration during the requisite time period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or she fell within at least one of the four provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is on 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 Citizenship and Immigration Services (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 record reflects that the applicant filed his initial TPS application on June 15, 2006 - almost seven years after the close of the initial registration period for Nicaraguans. The director accepted the application under the late filing provision in 8 C.F.R. § 244.2(f)(2). In support of his application, the applicant submitted a copy of his birth certificate, with translation; a letter from his pastor; a letter from the place where he volunteered; various receipts; tax documents; and, pay stubs.

On October 20, 2006, the director requested that the applicant submit further evidence of his eligibility for late registration, his qualifying continuous residence and continuous physical presence, and his identity. The director did not receive a response to the Request for Evidence (RFE).

On January 29, 2007, the director denied the application, determining that the applicant had failed to establish he was eligible for late registration and had failed to establish his qualifying continuous residence and continuous physical presence.

On appeal, the applicant asserts that he has been in the United States since 1997 and submits various documents relating to his residence and physical presence.

None of the evidence submitted overcomes the applicant's failure to file his TPS application 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 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS on this ground will be affirmed.

Furthermore, the evidence fails to establish the applicant's qualifying residence and continuous physical presence. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The evidence submitted to show the applicant's presence in 1998, 1999, and 2000 is not reliable. For example, some of the pay stubs dated during those years list another person's name, not the applicant's. The applicant provides no explanation for this. All of the documents from that time period list different addresses for the applicant. The letter dated July 22, 1998, from [REDACTED] of Saint Anthony's Church in Menlo Park, California, states that the applicant resides at [REDACTED] Alto. A Business Name Statement, dated September 8, 1998, lists the applicant's address at [REDACTED] Hayward, California. A paystub from Imperial Auto and Truck Center, Inc., dated November 25, 1998, lists the applicant's address at [REDACTED] Redwood City, California. And, a 1998 Internal Revenue Service (IRS) Form W-2 from Imperial Auto and Truck Center lists the applicant's address as 1912 - 23rd St., San Pablo, California. The applicant provides no explanation for these inconsistent addresses. The letter from [REDACTED] presents another discrepancy: It states that the applicant had been a member of the church since 1995. On appeal, the applicant asserts that he has been present in the United States since 1997. The applicant does not provide an explanation for this inconsistency. The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). The director's decision to deny the application for TPS on these grounds will 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 TPS 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.