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U.S. Citizenship
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FILE:

[SRC O2 213 55292]

Office: TEXAS SERVICE CENTER

NOV 06 2007
Date:

IN RE: Applicant:

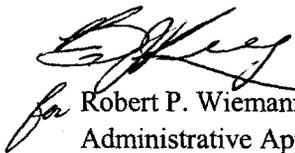


APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 California Service Center. 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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and 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 June 27, 2002, under CIS receipt number SRC 02 213 55292. The director initially denied the application on January 8, 2003, because the applicant failed to respond to a notice of intent to deny to submit evidence to establish his eligibility for late initial registration for TPS, his continuous residence in the United States since December 30, 1998, and evidence of his identity. The director, therefore, considered that application abandoned. 8 C.F.R. § 103.2(b)(13). 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. The record reflects that the applicant timely filed a motion to reopen on January 27, 2003. The director denied the motion to reopen on February 20, 2003, as the applicant failed to submit evidence to establish his eligibility for TPS. The director, however, granted the applicant appeal rights. The applicant filed a subsequent late motion to reopen on August 8, 2003. The director denied the motion to reopen because, as noted by the director, the applicant again failed to submit evidence to establish his eligibility for TPS. The applicant filed this appeal.

As noted above, a denial due to abandonment may not be appealed; however, in this case the director granted the applicant appeal rights. The AAO will, therefore, 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 re-parole; 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, 2009, 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 or she 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 or 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).

On appeal, the applicant asserts his eligibility to file a late application for TPS as the applicant's parent is a TPS registrant.

The record establishes that the applicant's father is a TPS registrant. Therefore, the applicant has established that he has met one of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2).

However, the applicant failed to submit sufficient evidence to establish that he had continuously resided in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999 to the date of filing. It is noted that although the applicant states in his TPS application, and on his Application for Employment Authorization, Form I-765, that he entered the United States in March 1998, a review of his father's file [REDACTED] reveals that his father indicated on his initial TPS application, filed on May 2, 1999, that the applicant was residing in Nicaragua; however, on subsequent TPS applications filed on July 22, 2001, on August 3, 2001, and on December 14, 2004, his father indicated that the applicant was residing in the United States. It is also noted that the applicant submitted school transcripts for the years beginning from school year 2000/01, through school year 2004/05; however, the applicant did not provide records prior to the year 2000. In that the applicant claims that he has been in the United States since January 1, 1998, it is reasonable to expect that the applicant would have, reliable documentation, such as school records and medical records, to establish continuous residence and continuous physical presence in the United States prior to 2000. The applicant has, therefore, failed to establish his continuous residence in the United States during the requisite period. Consequently, the director's decision to deny TPS on this ground is affirmed. In addition, the applicant has not established his continuous physical presence in the United States since January 5, 1999 to June 27, 2002, the date he filed his application for TPS. Therefore, the application will be denied for this additional reason.

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.