

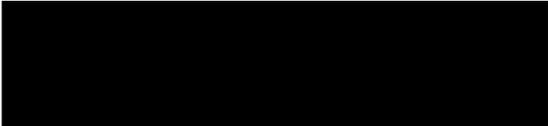
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U.S. Citizenship  
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FILE: [REDACTED] Office: California Service Center Date: SEP 10 2007  
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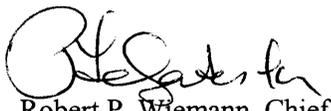
IN RE: Applicant: [REDACTED]

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 office 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 (CSC). A subsequent appeal was dismissed by the Chief, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen 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 his initial TPS application on June 10, 2003, under receipt number SRC 03 177 55452. The director denied that application on April 12, 2006, because the applicant failed to establish his eligibility for TPS late registration.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 26, 2004, and indicated that he was re-registering for TPS.

The director denied the current application on April 12, 2006, because the applicant failed to establish he was eligible for late registration. A subsequent appeal from the director's decision was dismissed on February 28, 2007, after the AAO also concluded that the applicant had failed to establish that he was eligible for late registration. The Chief of the AAO also concluded that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States.

On motion to reopen, the applicant reasserts his claim of eligibility for TPS. The applicant also submits some evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 244.3;
- (e) Is not ineligible under § 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. The record reveals that the applicant filed the current application with Citizenship and Immigration Services (CIS), on December 26, 2004.

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

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).

The applicant states, in his motion, that he entered the United States in 1997, and that he has answered all requests for documents from CIS. The applicant also states that he left the United States and attempted entry again to the United States on February 13, 2003. The applicant submits the following evidence: a letter in Spanish dated October 12, 2002, from [REDACTED] of the Instituto Nacional De Cancerologia in Mexico; copies of cash register receipts bearing no name; a copy of a receipt dated October 1, 2004, from West Flagler Tag Agency; copies of envelopes postmarked September 17, 2005, and October 17, 2005; copies of several Western Union money transfer receipts dated April 21, 2004 through January 13, 2007; copies of shipping receipts dated April 13, 2003 and October 26, 2003; a copy of a letter dated November 22, 2005, from the State of Florida Department of Children and Families; a copy of a payment notice dated April 4, 2006, from United Premium Finance Company; a copy of his temporary driving permit issued on May 4, 2005; a copy of a renewal notice from the Dade County Tax Collector; and copies of various cash register receipts which do not bear any name.

The applicant's motion to reopen consists of documentation relating to his claim of continuous residence since December 30, 1998, and continuous physical presence since January 5, 1999, 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 8 C.F.R. § 244.2(f)(2). As such, this issue on which the underlying decision was based has not been overcome on motion.

In addition, the Chief of the AAO concluded that the applicant did not establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

The applicant submits cash register and money order receipts from various merchants; however, these receipts do not reflect the applicant's name. Therefore, these receipts provide little, if any, credible weight in these proceedings. The remaining evidence post-dates the beginning of the requisite time periods for continuous residence and continuous physical presence in the United States. The applicant has not submitted sufficient credible evidence to establish his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999.

Furthermore, the record reflects that the applicant was apprehended by United States Border Patrol agents on February 13, 2003, while attempting to enter the United States illegally. The applicant stated to the agents that he left his home in Nicaragua on January 2, 2003. The applicant states, in his motion, that he had returned to Nicaragua to attend his spouse's surgery. However, he has not provided proof of his departure. In addition, the applicant claims that he has resided in the United States since 1997; however, the record contains copies of two personal identification cards issued to him on November 9, 1998, and April 4, 2001, in Nicaragua. The applicant has failed to establish that he has met the criteria described in 8 C.F.R. § 244.2 (b)

and (c). Consequently, this issue on which the underlying decision was based also has not been overcome on motion.

It is also noted that the applicant was granted voluntary departure until June 6, 2004, with an alternate order of deportation by an Immigration Judge at Miami, Florida, on February 6, 2004.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

**ORDER:** The motion to reopen is dismissed. The previous decision of the AAO dated February 28, 2007, is affirmed.