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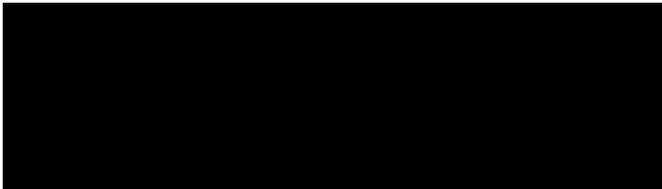
OFFICE: CALIFORNIA SERVICE CENTER

DATE: **SEP 24 20**

IN RE: Applicant: [REDACTED]

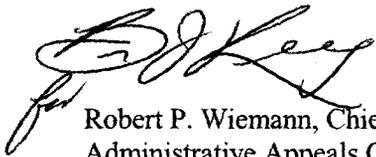
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



**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, and is now before the Administrative Appeals Office on appeal. The case will be remanded to the director for further action.

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 director denied the application because the applicant had failed to respond to a request dated February 5, 2006, to submit evidence to establish: (1) that he was eligible for late registration; (2) his identity and nationality; and (3) that he had continuously resided in the United States since December 30, 1998, and had been continuously physically present from January 5, 1999, to the date of filing the application.

On appeal, counsel asserts that the USCIS erroneously denied the applicant's TPS application because the applicant had an application for adjustment of status pending during the initial registration period, that the adjustment application was denied on September 24, 1999, but that the notary who assisted the applicant failed to advise him that he should apply for TPS within 60 days of the denial of his adjustment application.

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 January 5, 2009, upon the applicant's re-registration during the requisite time period.

The initial registration period for Nicaraguans was from January 5, 1999 through August 20, 1999. The record shows that the applicant filed his initial TPS application on December 29, 2004.

A review of the record of proceeding indicates that the applicant claimed to have entered the United States on August 5, 1995. On November 13, 1998, the applicant filed an application for adjustment of status to that of a lawful permanent resident pursuant to section 202 of Public Law 105-100 of the Nicaraguan Adjustment and Central American Relief Act (NACARA). At an interview with an officer of the Service on May 18, 1999, the applicant was advised that the evidence furnished to show commencement of physical presence in the United States prior to December 1, 1995 was inadequate; therefore, he was requested to submit additional evidence of his physical presence. Because the applicant failed to respond, the District Director, San Francisco, California, denied the NACARA application on September 24, 1999. The record contains a Request for Reconsideration of NACARA Adjustment Denial filed by the applicant on November 19, 2001. It is not clear in the record whether the district director had taken action on that request. It is further noted that the file contains an undated and unsigned letter advising the applicant that he has been granted permanent resident status. It also is not clear in the record whether that letter was sent to the applicant or whether the applicant was in fact granted permanent resident status.

While a pending adjustment application would render the applicant eligible for late initial registration described in 8 C.F.R. § 244.2(f)(2)(ii), the adjustment application was denied on September 24, 1999, the applicant submitted a request for reconsideration, and the file contains an undated and unsigned grant of permanent resident status.

Therefore, the case will be remanded for the director to review the record of proceeding and other USCIS records to determine the ultimate result of the NACARA application, and whether the applicant is eligible for late registration for TPS based on that application. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

It is noted that the record contains numerous evidence to establish the applicant's continuous residence and continuous physical presence in the United States from prior to December 30, 1998, through the date of filing the TPS application on December 29, 2004, and as described in 8 C.F.R. § 244.2(b) and (c). Additionally, the record contains a copy of the applicant's passport issued in Nicaragua on March 13, 1998, as evidence of his identity and nationality. Therefore, the applicant has overcome these findings of the director.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.