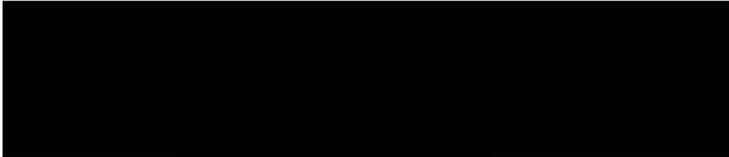


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**U.S. Citizenship
and Immigration
Services**

PUBLIC Copy



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FILE: [REDACTED]
[EAC 06 214 72355]

OFFICE: Vermont Service Center DATE:

APR 22 2008

INRE: Applicant:



APPLICATION: Application for Employment Authorization under 8 C.F.R. § 274a.12(c)(19)

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 Vermont Service Center. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (MO) 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 his initial TPS application on April 30, 2006, under CIS receipt number EAC 06 214 72355. The director denied that application on January 9, 2007, because the applicant failed to establish that 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. A subsequent appeal from the director's decision was filed on February 13, 2007, and was rejected by the Service as an untimely appeal but was accepted as a motion to reopen, and subsequently denied on May 16, 2007. The applicant appealed the director's May 16, 2007 decision on June 19, 2007. The appeal was rejected as untimely but was accepted as a motion to reopen, which was, again, denied by the director on October 31, 2007.

On appeal, the applicant claims that he has been present in the United States since 1997 and submits evidence to support his claim.

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
- (0)
 - (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 Nicaragua 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 designation of TPS for Nicaraguans has been extended several times, 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 reveals that the applicant filed this application with Citizenship and Immigration Services (CIS) on April 30, 2006, more than six years after the initial registration period had ended.

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 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 first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. 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.

On November 29, 2006, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 c.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to his residence and physical presence in the United States.

In response, the applicant submitted the following: a copy of his Nicaraguan personal identification card issued to him on June 3, 1997, in Nicaragua; a copy of his Nicaraguan passport issued on June 26, 2006, in Nicaragua; copies of money transfer receipts; and, copies of various cash register receipts that do not bear any name. The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on January 9, 2007.

The applicant submitted evidence in an attempt to establish his qualifying residence and physical presence 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). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999.

On appeal, the applicant asserts that he has lived in the United States since 1997, and that he has provided all of the requested evidence. The applicant also provides the following evidence: a copy of 2007 bank transaction activities; copies of several money transfer receipts from Western Union dated in 2006; and, copies of 2004 and 2005 income tax records.

The various cash register receipts submitted by the applicant do bear any name; therefore, have little, if any, evidentiary weight in this proceeding. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. In addition, it is noted that while the applicant claimed to have entered the United States in 1997, he provided a copy of his Nicaraguan passport issued to him in Nicaragua on June 26, 2006. The applicant has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, 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.