



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **AUG 01 2008**
[EAC 07 024 70709]
[EAC 08 157 54940 - MOTION]

IN RE: Applicant: [REDACTED]

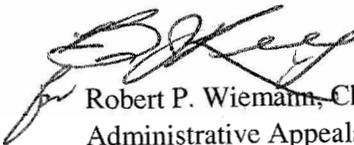
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

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, Vermont Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted. The previous decision of the AAO will be affirmed.

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 after determining that the applicant failed to establish he: 1) had continuously resided in the United States since December 30, 1998; 2) had been continuously physically present in the United States since January 5, 1999; and 3) was eligible for late registration.

Upon review of the record of proceeding, the AAO concurred with the director's conclusion and dismissed the appeal on October 2, 2007.

On motion to reopen, counsel for the applicant reasserts the applicant's claim of eligibility for TPS and submitted evidence in an attempt to establish his qualifying residence in the United States.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The applicant's motion to reopen consists of a statement from counsel for the applicant and submission of evidence. According to counsel, the AAO incorrectly determined that the applicant's Nicaraguan passport had been issued to him on April 19, 2006 in Nicaragua. Counsel is correct. The passport was issued by the Nicaraguan Consulate in Miami, Florida.

It is noted that in support of his initial appeal, the applicant provided copies of receipts from various retail stores such as Walgreens, Publix, Burger King, Wal-Mart, and, copies of money order receipts and money transfer receipts. However, the various retail store and money order receipts do not bear the applicant's name or indicate any connection to the applicant. Most of the money transfer receipts also fail to establish any connection with the applicant. There are several Western Union Money transfer receipts that do bear the applicant's name, but these receipts are dated subsequent to the qualifying dates to establish the applicant's continuous residence and continuous physical presence. Therefore, the receipts are of no probative value. With the motion to reopen, the applicant submits a letter, with English translation from [REDACTED]. According to [REDACTED] she has known the applicant since December 1997 when she began to work with the applicant. However, this statement is not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence or physical presence. As such, this issue on which the underlying decisions were based has not been overcome on motion.

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 probative 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 is affirmed.