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20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: FEB 05 2008
[EAC 06 328 88482]
[EAC 08 016 50926 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: 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 Director, Vermont Service Center, denied the application for Temporary Protected Status (TPS). The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The case will be reopened and the appeal will again be dismissed.

The applicant claims to be a citizen of Nicaragua who is seeking 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 failed to establish that she was eligible for late registration. The director also found that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

A subsequent appeal from the director's decision was dismissed on October 3, 2007, after the AAO also concluded that the applicant had failed to establish that she was eligible for late registration or had established her qualifying continuous residence and continuous physical presence. On motion to reopen, the applicant reasserts her claim of eligibility for TPS and submits evidence in an attempt to establish her qualifying continuous residence and continuous physical presence.

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
- (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 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 August 11, 2006.

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

The applicant filed a Form I-821, Application for Temporary Protected Status, on November 8, 2005 [WAC 06 039 70450]. The Director, California Service Center, denied the application on September 13, 2006, because the applicant failed to establish that she was eligible for late registration, and failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The director dismissed a subsequent motion to reopen. The applicant did not appeal the director's denial of her application. The applicant filed the application that is the subject of this appeal on August 11, 2006.¹ The applicant did not submit any evidence to establish her eligibility for late registration with her application.

On January 19, 2007, the applicant was requested to submit evidence establishing her 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 her qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to her residence and physical presence in the United States.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on February 26, 2007. The applicant did not address this issue on appeal or on motion.

The applicant submitted evidence in an attempt to establish her qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file her Application for Temporary Protected Status within the initial registration period. The applicant has not submitted any evidence to establish that she 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 her eligibility for late registration will be affirmed.

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

As stated above, the applicant was requested on January 19, 2007, to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. Evidence submitted by the applicant, including evidence submitted in response to the director's request and on appeal, consists of the following documentation:

¹ A copy of an August 10, 2006, letter from [REDACTED] signed by its pastor, [REDACTED]. The letter indicates that the applicant had been a member of the church since 1998.

¹ The applicant filed the current application prior to the denial of her initial application.

2. Copies of money order receipts dated in 2003 through 2007 showing the applicant with an address in Miami, Florida.
3. A copy on an August 4, 2004 receipt issued to the applicant and signed by [REDACTED]. The receipt indicates that it is for "ITIN;" however, there is no other indication of the vendor and the document does not show an address for the applicant.
4. A copy of an October 21, 2004, Taca International Airlines air waybill, showing the applicant as the shipper.
5. Copies of May 11, 2005, August 4, 2005, September 8, 2005, purchase receipts from BrandsMart showing the applicant as the purchaser with an address in Miami.
6. A copy of a November 27, 2005, credit card receipt for the applicant.
7. A partial copy of a 2005 check stub issued to the applicant from the Mimi-Dade Water and Sewer Department.
8. A copy of a June 8, 2006, purchase receipt for the applicant from [REDACTED].
9. A copy of a September 21, 2006, radiology report on the applicant. The document does not show the name or address of the institution submitting the report and does not show an address for the applicant.
10. A copy of a November 17, 2006, consult/referral form for the applicant from Mercy Mission Services in Miami, Florida.
11. A copy of a December 13, 2006, payment receipt for the applicant from Jackson Memorial Hospital in Miami.
12. A copy of a November 21, 2006, appointment notification, a February 6, 2007, prescription and a May 3, 2007, appointment notification for the applicant from the St. John Bosco Clinic in Miami.
13. Copies of several purchase receipts, money order receipts, and a water bill showing service in 2005, and a March 16, 2007 bank withdrawal receipt. None of these documents contain a name or otherwise identify the applicant as the person to whom they were issued.

The applicant also submitted a copy of a 2006 document written in Spanish. The document is not accompanied by an English translation as required by 8 C.F.R. § 103.2(b)(3). The document also contains no indication that it was issued to the applicant in the United States or otherwise identifies the applicant as living in the United States at the time the document was issued.

The letter from [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the letter does not contain the church's seal and the pastor does not explain the origin of the information to which he attests. Further, while the letter lists the applicant's current address, it does not indicate that this was the address at which the applicant resided throughout the period of her involvement with the church. The Taca International Airlines air waybill contains the typed name and address of the consignee, but the applicant's name and address, as the sender, are handwritten. Therefore, it cannot be determined when this information was added to the air waybill.

The director concluded that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application. The director's decision was affirmed by the AAO on October 3, 2007.

On motion, the applicant submits the following additional documentation:

14. A copy of a Western Union money order receipt dated August 10, 1998, November 6, 1998, January 13, 1999, April 20, 1999, July 25, 1999, and May 18, 2005, showing the applicant as the remitter.
15. Copies of MoneyGram money transfer receipts dated January 12, 2001, June 20, 2002, July 18, 2002, August 4, 2003, and January 4, 2004, and March 5, 2007.
16. A copy of a July 28, 2005, statement to the applicant from Miami-Dade Water and Sewer Department, for service from April to July 2005.
17. A copy of a May 12, 2006, medical statement, listing [REDACTED] as the patient and addressed to the applicant at an address in Miami, Florida. The document does not indicate the medical facility at which [REDACTED] was treated.
18. A copy of an October 31, 2006, letter from Comcast Cable addressed to the applicant at an address in Miami, Florida.
19. A copy of a November 28, 2006, customer copy of a Bank of America cashier's check showing the applicant as the remitter.
20. A copy of a February 8, 2007, work order for the applicant from Hewlett Packard.
21. A copy of a February 16, 2007, work order from CompUSA showing a service address for the applicant in Miami, Florida.
22. A copy of an August 21, 2007, receipt showing money received from the applicant.
23. Copies of the applicant's March through August 2007 bank statements from the Bank of America.

24. A copy of a notification from Jackson Memorial Hospital in Miami informing the applicant that her March 22, 2007, appointment had been canceled, and a copy of a letter from the hospital reminding the applicant of appointments on the same date.
25. Copies of June and July 2007 cable bills for the applicant at an address in Miami, Florida.
26. A copy of a credit card solicitation addressed to the applicant in Miami, Florida, requesting a reply by October 27, 2007.
27. Partial copies of telephone bills that do not show the applicant's address. The applicant also submitted copies of purchase receipts, Bank of America customer receipts, and banking receipts from Washington Mutual that do not contain a name and do not otherwise identify the applicant. Therefore, these documents are not probative in establishing the applicant's qualifying presence and residence in the United States.

With the exception of the money order receipt dated in 2005, the copies of the Western Union money order receipt forms all show a copyright date of 2000-2002. Therefore, it is highly unlikely that these documents were used to record transactions in 1998 and 1999. Additionally, the MoneyGram money order receipt form for the January 4, 2004, transaction shows a copyright date of 2004-2005 with a revision date of January 2006. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant has submitted insufficient evidence to establish her qualifying continuous residence or continuous physical presence in the United States during the period prior to 2005. She has, therefore, failed to establish that she 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.