

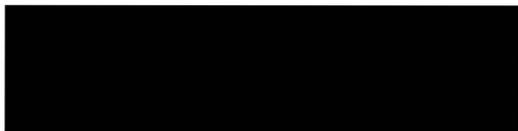
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



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

PUBLIC COPY



FILE: [REDACTED]
[EAC 0623577162]

OFFICE: VERMONT SERVICE CENTER

Date: JAN 10 2008

INRE: 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-represent

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a 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 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.

On appeal, the applicant reasserts his claim of eligibility for TPS. The applicant states that he has submitted sufficient evidence to establish his residence and presence in the United States. The applicant requests that his application be reconsidered and employment authorization be granted.

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.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under the term "felony" of this section. For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 244.1.

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 Hondurans 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 an initial TPS application on July 11, 2003, under Citizenship and Immigration Services (CIS) receipt number SRC0320255015. The Director, Texas Service Center, denied that application on November 14, 2003, due to abandonment.

The applicant filed a second TPS application on December 29, 2004, under CIS receipt number WAC0509680238, and indicated that he was re-registering for TPS. The Director, California Service Center, denied that application on May 17, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. No appeal for this decision was filed.

The applicant filed the current TPS application on May 18, 2006, and indicated he was filing for late registration.

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.

Along with his current TPS application, the applicant submitted a statement indicating during the initial registration period he had a C-1 visa, a non-immigrant crewman. The applicant also submitted Florida driver's licenses issued on September 26, 2001, and March 31, 2005.

On April 12, 2007, a Notice of Intent to Deny was issued which advised the applicant that no evidence of his C-1 visa, identity and his qualifying residence and physical presence had been submitted. 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: 1) of his C-1 visa; 2) establishing his nationality; 3) establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to his identity and to his residence and physical presence in the United States.

The director, in denying the application on August 1, 2007, noted that the applicant had failed to submit evidence that he had a C-1 visa during the initial registration period, and concluded that the applicant had failed to establish he was eligible for late registration.

The applicant submitted evidence in an attempt to establish his identity and 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.

As stated above, the applicant was requested on April 12, 2007 to submit evidence establishing his identity and his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted copies of documents previously submitted along with the following:

- A copy of his Nicaraguan identification card and passport. It is noted that the passport was issued in Nicaragua on January 14, 1999. The passport contains an indecipherable stamp dated October 19, 1999, along with an exit stamp from the Cayman Islands dated December 28, 1999, and an entry stamp reflecting the applicant entered the United States as a B-2 non-immigrant

visitor on June 3, 2001. The B-2 visa was valid until December 2, 2001. The applicant submitted a Notice of Action, Form 1-797, which reflected his request on Form 1-539, Application to Extend/Change Non-Immigrant Status, had been extended through June 2, 2002.

- Individual Income Tax Returns, Form 1040, for 2001 and 2002.
- Western Union receipts dated November 10 and 18, 2006, and January 29, 2007.
- A driver's license check from the Florida Department of Highway Safety & Motor Vehicles initiated on February 4, 2005.
- Notices of Action regarding his current and previously filed TPS and employment authorization applications.
- Several documents containing the applicant's address in Miami, Florida dated August 22, 2001, September 11, 2001, December 5 and 16, 2001, February 13 and 14, 2002, March 22, 2002, and August 20, 2003.

The director, in denying the application, concluded that the evidence submitted only served to establish the applicant's residence and physical presence since August 22, 2001, and therefore, the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant submits the following:

- Documentation from the Driver Licenses Division of the Florida Department of Highway Safety and Motor Vehicles dated August 16, 2002, which reflects the applicant's driving privilege had been suspended effective September 5, 2002, because he failed to appear for four traffic summonses in the Broward County Court in case numbers [REDACTED] and [REDACTED].
- Court documentation from Dade County Court reflecting the applicant entered a plea of *nolo contendere* to the offense of driving under the influence, a violation of Florida statute 316.193(1), a misdemeanor. The applicant was ordered to pay a fine and was placed on probation for six months beginning October 4, 2001. Case no. [REDACTED].
- A Certificate of Completion reflecting the applicant completed a Student Training Alcohol Related Topic Course on September 11, 2001.
- Incomplete documentation dated April 22, 2002, from the South Regional County Courthouse located in Hollywood, Florida, regarding the applicant's probation in Case no. [REDACTED].
- Court documentation from Dade County Court reflecting on October 4, 2001, the applicant entered a plea of *nolo contendere* to the offense of driving without a license, a violation of Florida statute 322.03(1). Adjudication of guilt was withheld. Case no. [REDACTED].

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

As the court disposition for the offense of driving without a license was not submitted in its entirety it is not known whether a form of punishment, penalty or restraint was ordered by the judge. Therefore, at this time,

it cannot be determined whether the applicant has been convicted of a misdemeanor offense for immigration purposes.

The applicant has one misdemeanor conviction of driving under the influence. This single conviction, however, does not render the applicant ineligible for the benefit being sought pursuant to Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

On appeal, the applicant also provides copies of previously submitted documents along with:

- A statement from _ of Hollywood, Florida, who indicated she has known the applicant since July 2001, and attested to his moral character.
- A new Nicaraguan passport issued on August 29, 2006.
- A bank statement from Washington Mutual from the period ending February 5, 2007.
- Several cable billing statements from Comcast dated during 2006.
- Rent receipts issued in 2004, 2005 and 2006.
- Tickets issued on August 11, 2003, for unlawful parking and on January 29, 2005, for driving without insurance.
- Certificate of Title for a vehicle dated February 13, 2002, and car insurance statements issued in 2001, 2002 and 2004.
- Several documents and receipts dated during 2002 through 2007.
- Two statements in the Spanish language from _ and . These statements, however, have no probative value as they were not accompanied by the required English translation as required in 8 C.F.R. 103.2(b)(3).

The applicant once again has submitted evidence that only establishes his continuous residence and physical presence in the United States since July 2001. The applicant not submitted any evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the required period of December 30, 1998, to June 2001. He 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.