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FILE: [REDACTED]
[SRC 04 211 53149]

Office: TEXAS SERVICE CENTER Date: **JAN 29 2008**

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 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, Texas Service Center, and is now before the Administrative Appeals Office 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 he was eligible for late registration. The director also found that the applicant had failed to provide evidence that he is a national of a foreign state designated by the Attorney General and eligible for the granting of TPS, and to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254

On appeal, the applicant asserts that he has been living in the United States since 1997.

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 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 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 initial registration period for Nicaraguans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS) on July 28, 2004. 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.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on September 2, 2004.

The applicant does not address this issue on appeal.

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 that he is a national of a foreign state designated by the Attorney General and eligible for the granting of TPS.

The regulation at 8 C.F.R. § 244.9(a) provides, in pertinent part:

- (1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state . . . [T]he applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of:
 - (i) Passport;
 - (ii) Birth certificate accompanied by photo identification; and/or
 - (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

The applicant submitted a copy of his passport from the Republic of Nicaragua. On appeal, the applicant also submits a copy of a State of Florida identification card. The applicant has submitted sufficient evidence to establish that he is a national of Nicaragua. Therefore, the director's decision denying the application for this reason is withdrawn.

The third 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.

With his application, the applicant submitted copies of various purchase receipts that do not contain his name or other evidence that they were issued to him. The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and, as noted, denied the application on September 2, 2004.

On appeal, the applicant reasserts his claim and submits the following documentation:

1. Copies of utility bills from Miami-Dade Water and Sewer Department for the applicant for service periods from November 24, 1998 to February 24, 1999, and from August 24, 1999 to November 23, 1999.
2. Copies of utility bills from Florida Power & Light Company for monthly service periods ending August 19, 1999, and September 17, 1999 and showing the applicant as the customer.
3. Copies of statements from Argent Healthcare Financial Services dated April 23, June 8 and October 8, 1999.
4. Copies of pay slips from Crystal Art of Florida, Inc., showing the applicant as the employee and check dates of April 18, 1999, and May 8, 1999, and August 8, 1999.

We note that the pay slips from Crystal Art of Florida, Inc. show a copyright date of 1998 to 2002. Therefore, it is unlikely that the forms were used to record pay prior to 2002. 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 failed to submit any objective evidence to explain or justify the copyright dates of the pay slips.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since December 30, 1998, or his continuous physical presence in the United States since January 5, 1999. 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 record reflects that the applicant was apprehended crossing the border without inspection on June 19, 2003. On December 18, 2003, an immigration judge ordered him, *in absentia*, to be removed to Nicaragua. The record contains a Warrant of Removal/Deportation dated December 30, 2003.

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.