

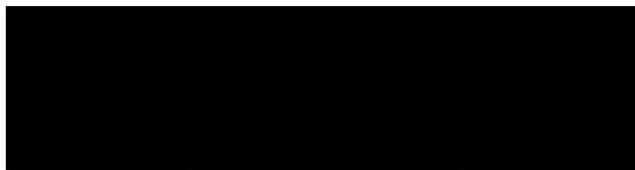
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE:

OFFICE: VERMONT SERVICE CENTER

DATE: ~~MAY~~ 05 2008

[EAC 0620071839]

[EAC 08 001 51661-motion]

INRE:

Applicant:



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 application was denied by the Director, Vennont Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). 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 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 denied the application because the applicant failed to establish continuous residence in the United States since December 30, 1998. The applicant's appeal from the denial of his application was dismissed on August 24, 2007, as the AAO concurred with the director's findings. The AAO also determined that the applicant had failed to establish his nationality.

On motion to reopen, the applicant reasserts his claim of eligibility for TPS and submits evidence in an attempt to establish his continuous residence and physical presence in the United States during the requisite periods.

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 to reconsider must state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy ... [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

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.P.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.P.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 this application with Citizenship and Immigration Services (CIS) on April 12, 2006.

On motion, the applicant does not provide any evidence to establish eligibility for late registration. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.P.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.

In an attempt to establish his continuous residence since December 30, 1998, and physical presence since January 5, 1999, the applicant, on motion, submits:

- Miscellaneous receipts dated from January 29, 1999, through November 14, 2005.

- Customer and money order receipts dated since 2006.
- Rent receipts dated from January 30, 1998, through April 30, 1998, and since January 30, 1999.

The miscellaneous receipts have no probative value or evidentiary weight as they do not list the applicant's name. The customer and money order receipts only serve to establish the applicant's residence since 2006. The rent receipts have little probative value as they: 1) were not accompanied by a copy of a rental agreement or a notarized affidavit from the applicant's landlord; 2) only serve to establish the applicant's residence prior to May 1, 1998 and subsequent to January 29, 1999; and 3) do not serve to establish the applicant's residence in the United States as of December 30, 1988.

The applicant has not submitted any evidence to establish his qualifying continuous residence or continuous physical presence in the United States. He has, thereby, 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 will be affirmed.

Finally, as noted by the AAO in its decision, the applicant has not established that he is a national or citizen of Nicaragua. No evidence such as a passport or national identification document has been presented by the applicant. 8 c.P.R. §§ 244.2(a) and (9)(a)(1). Accordingly, the appeal will also be dismissed for this reason.

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.

ORDER: The appeal is dismissed.