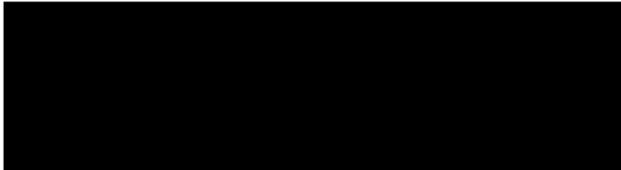


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Services**

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M<sub>1</sub>

FILE:



OFFICE: California Service Center

DATE:

**JUL 27 2007**

[WAC 05 137 73212]

IN RE:

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 office that originally decided your case. Any further inquiry must be made to that office.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center (CSC). It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is 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 on the grounds that the applicant failed to establish his continuous physical presence in the United States since January 5, 1999, and continuous residence in the United States since December 30, 1998, as required for TPS applicants from Nicaragua.

On appeal the applicant's parents submit some additional documentation and claim that their son is entitled to TPS derivatively through his mother.

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.

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.

Nicaraguan nationals applying for TPS must demonstrate continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. The initial registration period for Nicaraguans was from January 5, 1999 through August 20, 1999. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 2009, upon the applicant's re-registration during the requisite time period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she met at least one of the conditions described in 8 C.F.R. § 244.2(f)(2) above.

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). *See* 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. *See* 8 C.F.R. § 244.9(b).

The record shows that the applicant was born in Nicaragua on September 14, 1993, entered the United States without inspection on July 29, 2003, and filed his initial Form I-821, Application for Temporary Protected Status, on February 14, 2005 – five and one-half years after the close of the initial registration period for Nicaraguan nationals. On May 2, 2006, the California Service Center requested the applicant to submit evidence that he met the requirements for late registration, evidence of his nationality/identity, as well as evidence of his continuous residence in the United States since December 30, 1998, and continuous physical presence in the country since January 5, 1999. In response, the applicant's parents submitted additional documentation.

On August 3, 2006, the director denied the application on the grounds that the evidence submitted, which dated back only as far as 2002, failed to establish the applicant's continuous physical presence in the United States since January 5, 1999, and continuous residence in the United States since December 30, 1998.

On appeal the applicant's parents submit some additional school records from the years 2004-2006. Thus, the record still contains no evidence that the applicant has been continuously physically present in the United States since January 5, 1999, and continuously resident in the county since December 30, 1998, as required for TPS applicants from Nicaragua under C.F.R. § 244.2(b) and (c). In fact, the record specifically documents – in the form of a Form I-213, Record of Deportable/Inadmissible Alien – that the applicant did not enter the United States until July 29, 2003. Accordingly, the applicant does not meet the continuous physical presence and continuous residence requirements for Nicaraguan nationals applying for TPS. The director's denial of the application on those grounds will therefore be affirmed.

On appeal the applicant's mother asserts that he is eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(iv) because she was approved for TPS and he qualifies derivatively as her dependent. Citizenship and Immigration Services (CIS) records confirm that the applicant's mother, [REDACTED], applied for TPS during the initial registration period for Nicaraguan nationals on June 14, 1999, was approved on March 31, 2000, and has obtained TPS extensions over the years since then.<sup>1</sup> To be eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(iv), however, a late-filing child of a TPS-eligible parent must meet the same continuous residence and continuous physical presence requirements as the parent. Since the applicant did not enter the United States until July 29, 2003, he was not continuously physically present in the United States since January 5, 1999, nor a continuous resident of the United States since December 30, 1998, as required for TPS applicants from Nicaragua under 8 C.F.R. § 244.2(b) and (c). Therefore, the applicant is ineligible for late TPS registration regardless of his mother's eligibility. For this additional reason the application must be denied.

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.

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<sup>1</sup> CIS records also show that the applicant's father, [REDACTED] applied for TPS on June 19, 2002, was approved on January 22, 2004 (evidently under 8 C.F.R. § 244.2(f)(2)(iv) as the spouse of a TPS registrant), but was subsequently denied in an application to extend his TPS.