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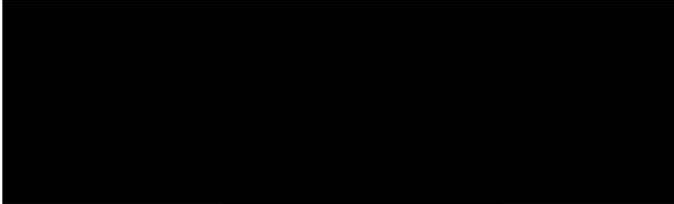
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
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U.S. Citizenship  
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FILE: [REDACTED]  
[EAC 06 272 70220]

Office: VERMONT SERVICE CENTER

Date: FEB 20 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:



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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a citizen of Nicaragua who is applying for 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 had been continuously physically present in the United States since January 5, 1999.

On appeal, counsel asserts that the applicant has provided sufficient evidence to establish his physical presence in the United States.

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.

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 in the United States 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).

On June 26, 2007, the applicant was requested to submit evidence establishing his continuous physical presence since January 15, 1999, in the United States. The applicant, in response, provided the following documentation:

- Copies of his employment authorization cards issued pursuant to his Form I-589, Application for Asylum and Withholding of Removal, (valid August 13, 1993, through November 1, 1997) and Form I-485, Application for Adjustment of Status to Lawful Permanent Resident, (valid February 16, 2005, through February 15, 2006).
- Copies of Form I-797C, Notice of Action, relating to his employment authorization cards pursuant to his asylum application.
- Copies of his TPS application and application for employment authorization.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on September 11, 2007.

On appeal, counsel submits copies of documents previously submitted along with the following documentation in an attempt to establish the applicant's physical presence in the United States since January 5, 1999:

- Copies of the applicant's Florida driver licenses issued on January 28, 1994, which expired on August 10, 2000, and March 17, 2006, which expires on March 18, 2008.
- A letter dated July 19, 2000, from the legacy Immigration and Naturalization Service informing the applicant of his scheduled fingerprint appointment on October 14, 2000.

- Notices of Action dated and June 14, 2007, and July 25, 2006,
- Letters dated August 29, 2003, and September 15, 2003, from Citizenship and Immigration Services regarding his fingerprint appointment and interview appointment for his Form I-485, respectively.

The remaining documents submitted on appeal have little probative value as they only serve to establish the applicant's physical presence in the United States *prior to* January 5, 1999.

The applicant claims on his TPS application to have been residing in the United States since 1992, and has provided evidence to establish his *continuous* residence and physical presence through July 1998. It is unclear why counsel would provide documents from the Florida Power & Light Company and Bell South Telecommunications that only establishes the applicant's physical presence in the United States before July 1998. No evidence such as lease agreements, utility statements, employment letters, pay stubs, wage and tax statements, or affidavits from affiants has been submitted to corroborate the applicant's physical presence since January 5, 1999.

The applicant has not submitted sufficient evidence to establish his qualifying continuous physical presence in the United States during the period since January 5, 1999. He has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. §§ 244.2(b). Consequently, the director's decision to deny the application for TPS will be affirmed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The applicant also has not submitted sufficient evidence to establish his continuous residence in the United States since December 30, 1998, and therefore has failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(c). Consequently, the application must also be denied for this reason.

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.