

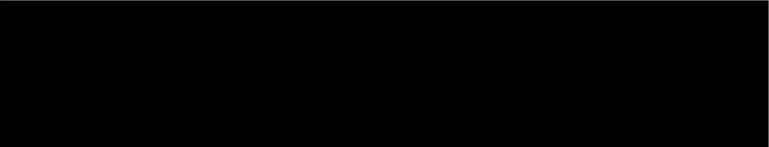
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U.S. Citizenship  
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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER Date: FEB 21 2008  
[EAC 06 293 81248]

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.

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 provide evidence of his nationality, and failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant states that he was unaware that he had not established prima facie evidence of his eligibility for TPS, and that he has been in the United States since November 5, 1995.

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.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 Nicaragua 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 July 16, 2006.

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 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.

On July 11, 2007, 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 establishing that he is a national of Nicaragua and evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant did not respond to the request for additional documentation.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on September 13, 2007. On appeal, the applicant states that he has “continued to register since the first time in 2001” and has “complied with all regulations and fees.”

The record reflects that the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, on November 30, 1998, under the Nicaraguan Adjustment and Central American Relief Act (NACARA) under CIS receipt number SRC 99 027 50621. On June 5, 2002, the District Director, Los Angeles, California, denied the application for abandonment after the applicant failed to respond to the director’s request for additional evidence. If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15). The record does not reflect that the applicant filed a motion to reopen the director’s denial of his application.

Pursuant to 8 C.F.R. § 244.2(g), the applicant was required to file his Form I-821, Application for Temporary Protected Status, within 60 days of the denial of his Form I-485 application on June 5, 2002. The applicant filed this application for TPS on July 16, 2006, more than four years after his application was denied.

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 60 days immediately following the denial of his Form I-485 application. 8 C.F.R. § 244.2(g). The applicant has not submitted any evidence to establish that he has met any of the other 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 Nicaragua.

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.

As noted above, the applicant failed to respond to the director's July 11, 2007, request to submit evidence to establish that he is a national of Nicaragua.

On appeal, the applicant submits a copy of his Nicaraguan birth certificate and passport. The applicant has therefore submitted sufficient evidence to establish that he is a national of Nicaragua.

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.

As stated above, the applicant was requested on July 11, 2007, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. He did not respond to the request.

The director concluded that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application.

On appeal, the applicant states that he has remained in the United States since his entry in 1995. The applicant submits the following documentation in support of his appeal:

1. A copy of a document from Servicio De Inmigracion in Bakersfield, California dated September 9, 1998. The document is not accompanied by an English translation as required by 8 C.F.R. § 103.2(b)(3).
2. A copy of the applicant's California immunization records with entries dated in September 1998, a copy of a May 24, 2001, Supplemental Form to I-693, with entries in September 1998, and a bill for medical services dated September 12, 1998.
3. A copy of a 1999 consent by the applicant for a drug and alcohol screening at a doctor's office in Bakersfield, California.
4. A copy of an envelope dated December 18, 2000, addressed to the applicant in Bakersfield, California.
5. A copy of an August 16, 2000, card acknowledging the applicant's registration for the selective service.

6. A copy of a June 7, 2001 certification from the Superior Court of California, County of Kern, certifying that the applicant had no criminal record with the county.
7. A copy of a June 9, 2003, envelope addressed to the applicant in Bakersfield, California.
8. A copy of a September 19, 2007, California Department of Motor Vehicles Driver License/Identification Card Information Request, indicating that the applicant was issued an identification card in April 2000, and a driver's license in October 2003.

The applicant also submitted copies of various correspondence addressed to him in the United States from CIS with dates in 1998 through 2002, and in 2007. However, the applicant submitted no evidence of his residence or presence in the United States from October 2003 to 2006. The applicant is required to submit evidence to establish that he has continuously resided in the United States since December 30, 1998, and has been continuous presence in the United States since January 5, 1999, to the date he filed his Form I-821 application.

The applicant has not submitted any evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the period from 2004 to 2006. 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.