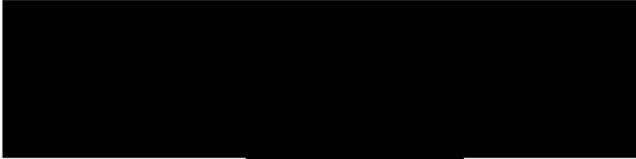




**U.S. Citizenship
and Immigration
Services**

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: **MAR 25 2008**

[WAC 07 10450367, motion]

[WAC 05 148 70054]

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 California Service Center. 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, California Service Center. A subsequent appeal was rejected by the Chief, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The initial application will be reopened and the case will be remanded for further consideration and action.

The applicant is stated to be a native and 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 had not established that he had continuously resided in the United States since December 30, 1998 and that he had been continuously physically present in this country since January 5, 1999.

A subsequent appeal from the director's decision was rejected on January 30, 2007, after the AAO Chief found that the applicant had failed to file a timely appeal.

On motion, the applicant successfully argues that his previous appeal should not have been considered as filed late and forwards additional documentation concerning his continuous residence and continuous 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 temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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 applicant states that he first entered the United States on December 22, 1998. A list of evidence submitted by the applicant to show that he satisfying continuous residence and continuous requirements is shown below:

1. A request for eye care appointment for the applicant dated January 8, 1999 from a counselor with the Southern Florida Children's Health Project.
2. A copy of the applicant's consultation request form dated January 8, 1999 for the Pediatric Mobile Clinic of the University of Miami School of Medicine Division of Community Pediatrics.
3. A copy of the applicant's appointment notice informing him of an appointment on February 19, 1999 at an Epilepsy Foundation of Southern Florida office.

4. A copy of an Epilepsy Foundation of Southern Florida, Inc. **medical** notification showing the applicant was scheduled for an appointment on August 5, 1999.
5. A copy of an Epilepsy Foundation of Southern Florida, Inc. medical notification showing the applicant was scheduled for an appointment on August 26, 1999.
6. A copy of the applicant's appointment notice dated May 1, 2001, referring him to a doctor in Homestead, Florida for an eye examination.
7. A copy of the applicant's Spring 2003 Florida Comprehensive Assessment Test completed when he was in the 10th grade at Homestead Senior High School in Dade County Florida.
8. A copy of the applicant's FCAT writing student report for 2003 when he was in 10th grade at Homestead Senior High School the Dade school district in Florida.
9. A copy of a document dated August 30, 2003, from the principal of Homestead Senior High School showing the status of the applicant's application for free and reduced price meals.
10. A copy of a shipping label to the applicant showing he was shipped a computer from Office Depot to his address in Florida City, Florida, on September 2, 2003.
11. A copy of the applicant's grade 12 class schedule at Homestead Senior High School in Florida.
12. A copy of the applicant's South Florida Children's Health Project immunization record.
13. A copy of the applicant's Selective Service registration acknowledgement Card showing the date of last action as April 29, 2005.
14. A copy of a letter dated May 23, 2005, to the applicant from the Director of Undergraduate Admissions of Florida International University.
15. A copy of a certificate dated June, 2005, presented to the applicant for completing aviation and aerospace studies at Homestead Senior High School.
16. A copy of the applicant's Homestead Senior High School identification card for 2005.
17. A copy of an Epilepsy Foundation of Southern Florida, Inc. medical notification showing the applicant was scheduled for an appointment on August 13, 2005.

18. A copy of a letter from the Social Security Administration dated September 2, 2005, showing the applicant had applied for a Social Security card and that he should receive it in about two weeks.
19. A copy of the applicant's Florida identification card issued on March 8, 2006.

As stated above, the applicant states that he first entered the United States on December 22, 1998. Based upon this assertion and the January 8, 1999 request for an eye care appointment for him from a counselor with the Southern Florida Children's Health Project along with the other evidence submitted by the applicant, it is concluded that he has established his continuous residence and continuous physical presence during the required periods. 8 C.F.R. §§ 244.2 (b) and (c).

The reasons provided by the director for denial have been overcome. However, although not addressed by the director, the applicant has provided insufficient evidence to establish that he is a national or citizen of Nicaragua. He has provided a copy of his birth certificate along with an English translation. However, a birth certificate alone does not establish nationality. The record does not contain any photo identification such as a passport or national identity document. 8 C.F.R. § 244.2(a) and § 244.9(a)(1).

The director's denial of the application is withdrawn and the application is remanded for a new decision. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

In these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded to the director for further action consistent with the above and entry of a decision.