



U.S. Citizenship
and Immigration
Services

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FILE:

[EAC 07 310 80988]

OFFICE: Vermont Service Center

DATE: SEP 02 2008

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.

for 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 is stated 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 establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods, and failed to provide a copy of an identity document.

On appeal, the applicant states that he came to the United States when he was 17 years of age and that he did not have a steady job or a place to stay to keep records of his continuous residence and continuous physical presence in the United States during the requisite periods.

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 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 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 30, 2007.

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).

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 December 19, 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 his qualifying continuous residence and continuous physical presence in the United States as well as a copy of his identity document. The applicant, in response, provided documentation relating to his residence and physical presence in the United States.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on February 25, 2008.

On appeal, the applicant reasserts his eligibility for TPS.

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 the initial registration period. The applicant has not submitted any evidence to establish that he has met any of the 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 his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999.

On appeal, the applicant claims that he arrived in the United States in 1998 and submits the following documentation:

1. A copy of a Sworn Declaration dated March 15, 2008, listing [REDACTED] and [REDACTED] attesting that they have known the applicant since childhood. They further declared that the applicant came to the United States in 1998;
2. A copy of a Florida Identification Card and a copy of an Employment Authorization Card issued to [REDACTED];
3. A copy of an Employment Authorization Card issued to [REDACTED];
4. A copy of a Florida driver's license issued to [REDACTED];
5. A copy of a Permanent Resident Card and a copy of a Florida Learner License issued to [REDACTED];
6. A copy of a Florida Driver's License and a copy of a Social Security Card issued to [REDACTED];
7. Copies of hand-written receipts dated March 1, 2000, October 3, 1998, and February 4, 1999;
8. Copies of money order receipts dated December 12, 2001, and October 16, 2002; and,
9. A copy of a receipt from Pronto Envious dated March 24, 2006.

The Sworn Declaration states only that the writers have “known the applicant since childhood and that he came to the United States in 1998,” and thus are not sufficiently relevant to support the applicant’s assertions of eligibility. While 8 C.F.R. § 244.9(a)(2) specifically states that additional documents such as letters “may” be accepted in support of the applicant’s claim, the regulations do not suggest that such evidence alone is sufficient to establish the applicant’s qualifying residence or physical presence in the United States. The applicant claims to have lived in the United States since 1998, it is reasonable to expect that he would have some other type of contemporaneous evidence to support his claim. However, no such evidence has been provided. It is also noted that the record contains receipts from various establishments such as Home Depot, Kmart, Macy’s, Walgreens, Sedano’s Pharmacy & Discount, La Mia Supermarket, and Eckerd Drug which do not bear the applicant’s name and are therefore of no probative value. This evidence does not establish that the applicant had continuously resided in the United States from December 30, 1998 and been continuously physically present since January 5, 1999.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the requisite period. 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.

Finally, the applicant has failed to establish his national identity. Section 8 C.F.R. § 244.9 requires applicants to submit all information requested in the instruction on the forms and as may be requested by CIS. Acceptable evidence of nationality includes:

- i. Passport;
- ii. Birth Certificate accompanied by photo identification; and/or
- iii. Any national identity document from the alien’s country of origin bearing a photo and/or fingerprint.

The record reveals that the applicant has only submitted a copy of his Nicaraguan birth certificate and an English translation and not the required photo identification. The evidence submitted is not sufficient to establish the applicant’s national identity. Therefore, the director’s decision to deny the application on this ground is also 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.