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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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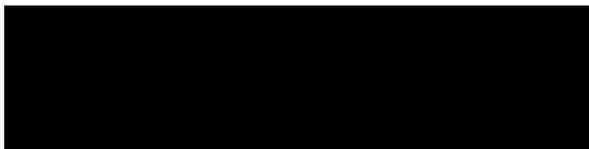
DATE: **OCT 03 2011** Office: VERMONT SERVICE CENTER

FILE:

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and action.

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 withdrew TPS because it was determined that the applicant did not establish *prima facie* eligibility and, therefore, he was not eligible for late initial filing.

On appeal, the applicant submits additional documentation to establish his continuous residence and continuous physical presence in the United States during the requisite periods.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if: (1) the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status; (2) the alien has not remained continuously physically present in the United States from the date the alien was first granted TPS; and (3) the alien fails without good cause to register with the Secretary within 30 days before the end of each 12-month period after the granting of TPS. Section 244.14 of the Act, 8 C.F.R. § 244.14(a)(1).

The director, in his decision to withdraw TPS, dated November 2, 2009, concluded in pertinent part:

You stated you were eligible for temporary protected status based on your January 5, 1999, designation of Nicaragua as a state from which temporary status may be granted. Your asylum was denied by the immigration judge on September 24, 1997. In addition, following a Board remand the immigration judge denied your application for adjustment of status again on June 8, 2000. On June 29, 2009 regarding your appeal from the immigration judge's decision the Board of Immigration Appeals found that you have failed to establish *prima facie* eligibility for temporary protected status.

The record contains a copy of a decision dated June 11, 2010, from Board of Immigration Appeals (BIA), which indicates that on March 8, 2010, the U.S. Court of Appeals for the Seventh Circuit granted the government's unopposed motion for remand of the record for purposes of further consideration of the applicant's eligibility for adjustment of status under section 202 of NACARA and, if necessary, the applicant's eligibility for TPS.¹ The BIA vacated its decision of June 29, 2009 and remanded the record to the immigration judge for further proceedings.

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;

¹ Court of Appeals Docket # [REDACTED]

- (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 Secretary 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 term *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 term *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 continuous residence in the United States since December 30, 1998, and continuous physical presence 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, 2012, 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 U.S. Citizenship and Immigration Services (USCIS). 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 appeal from the denial of this TPS application, the applicant presented evidence, including contemporaneous documents, which only established his continuous residence and continuous physical presence in the United States through 2003.

On July 27, 2011, the AAO issued a notice to the applicant advising him that it was the AAO's intent to dismiss the appeal as he did not overcome the director's findings. The applicant was granted 30 days to provide evidence establishing his continuous residence and continuous physical presence in the United States from 2004 to the date of filing the TPS application.

The applicant, in response, submits documentation relating to the electronic filing of his income tax for 2007, and notices from tax preparers regarding the filing of his income taxes for 2002 and 2004. The applicant also submits:

- Wage and tax statements for 2002, 2008, 2009 and 2010.
- Rent receipts from 2007 through 2011.
- Wire transfers from 2007 through 2011.
- A printout from the Social Security Administration reflecting the applicant's earnings from 2001 through 2009.
- Automobile insurance policies for 2002 through 2011 from [REDACTED] Insurance Agency of Palatine, Illinois.
- A letter dated August 17, 2011, from [REDACTED] of [REDACTED], Illinois, who indicated that the applicant has been a patient at [REDACTED] since 2003. The affiant indicated that the applicant has visited its office every six months for check-ups and cleanings.

- A lease agreement entered into on April 26, 2007, between the applicant and Eckhard Seichter for property at [REDACTED]

The applicant has provided sufficient evidence to establish continuous residence since December 30, 1998, and continuous physical presence since January 5, 1999, in the United States. He has, thereby, established that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). The applicant has also established eligibility for late registration. 8 C.F.R. § 244.2(f)(2)(ii). There are no other known grounds of ineligibility, therefore, the director's decision to withdraw the applicant's TPS will, itself, be withdrawn. However, the validity period of the applicant's fingerprint check has expired

Accordingly, the case will be returned for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Following completion of this requirement, the director will render a new decision. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i), and the applicant shall be permitted to file an appeal without fee.

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