

**PUBLIC COPY**

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



U.S. Citizenship  
and Immigration  
Services

MI



FILE:



Office: TEXAS SERVICE CENTER

Date:

**AUG 03 2005**

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is 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 failed to establish her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999.

On appeal, the applicant submits a statement and additional evidence.

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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until July 5, 2006, 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 her initial TPS application with Citizenship and Immigration Services (CIS), on June 11, 2003. Although the applicant did not file her TPS application during the initial registration period, she submitted evidence that she qualified for late initial registration under the provisions of 8 C.F.R. § 244.2(f)(2)(iv), as the spouse of an alien currently eligible to be a TPS registrant.

The burden of proof is upon the applicant to establish that 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 her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

On August 8, 2003, the applicant was requested to submit evidence establishing her 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 her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999. In addition, the applicant was requested to submit evidence establishing her identity and nationality, and photo identification.

The applicant, in response, submitted photocopies of the following documentation:

1. A letter from her husband, [REDACTED] attesting that the applicant is eligible for TPS as the spouse of a TPS registrant;
2. An affidavit dated August 22, 2003, from [REDACTED] attesting that the applicant has lived with him in the United States since February 1998, and stating that she does not have evidence for 1998 through November 1999 because she did not have an identification card at that time;
3. The marriage certificate, with English translation, Department of Esteli, Nicaragua, indicating the marriage of the applicant and [REDACTED] in Nicaragua on March 31, 1992;
4. The applicant's Nicaraguan birth certificate, with English translation;
5. The applicant's Nicaraguan national identity card issued on August 7, 1995;
6. The applicant's State of Florida Identification Card issued on December 30, 1999, and Florida Driver License issued on May 2, 2000;
7. Documents relating to the applicant's husband, including his Florida Identification Card issued on April 9, 1998, evidence in his name relating to his residence and physical presence in the United States during 1999 and 2000, Employment Authorization documents (EAD) from September 9, 1999 through January 5, 2005, with validity under Category A12, and a CIS receipt notice indicating his TPS approval;
8. A letter dated July 3, 2000, to the applicant from FDS National Bank, denying a Burdines charge account application;
9. Chase Visa cards indicating the same account for the applicant and [REDACTED] and Chase billing statements dated September 17, 2001;
10. An automobile insurance policy for the period of October 24, 2001 through October 24, 2002, listing the applicant and her husband as drivers; and,
11. Internal Revenue Service (IRS) Forms 1040, U.S. Individual Income Tax Return, for the years 2000, 2001, and 2002, in the name of [REDACTED]

The director determined that the applicant had failed to establish her continuous residence and continuous physical presence during the requisite periods, and denied the application on January 13, 2004.

On appeal, the applicant states that she has lived in the United States since February 1998 but does not have documentation from the early dates because her husband was supporting her. She states that she qualifies for late registration as the spouse of a TPS registrant, and that the income taxes and other documentation verify that she lives with her husband at the same address. In support of the appeal, the applicant resubmits documentation that had previously been entered into the record. She also submits: an affidavit from her husband dated February 9, 2004, attesting to her residence in the United States since February 1998; a Warranty Deed in the names of the applicant and her husband dated February 21, 2003; and, money transfer receipts dated in October 2001, 2002 and 2003.

It is noted that while the applicant is listed as a driver along with her husband on the insurance policy dated in the year 2001, she is not listed on the 1999 policy in her husband's name. The applicant states that the IRS forms are

proof that her husband has supported her, and that they reside at the same address. However, the IRS forms for the years 2000, 2001, and 2002, list only the name of the applicant's husband and the checked box indicates that he is "Single." The earliest evidence in the applicant's name consists of her Florida Identification Card issued on December 30, 1999. The applicant's husband has attested to her presence in the United States prior to December 1999, however, the record does not contain any corroborating evidence of her residence and physical presence in the United States for the initial portion of the requisite periods. Consequently, the director's decision that the applicant failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c), will be affirmed.

An alien applying for temporary protected status 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.