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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

Date:

FEB 12 2008

[EAC 06 255 77414]

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned  
to the Vermont Service Center. Any further inquiry must be made to that office.

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 she was eligible for late registration. The director also found that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel states that the director “factually and legally erred” in denying the applicant’s TPS application because she timely filed her application for TPS following the denial of her motion to reconsider the decision denying her Form I-485, Application to Register Permanent Resident or Adjust Status.

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 May 31, 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 her application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The record reflects that the applicant filed a Form I-485 application [SRC 00 003 53124] on September 8, 1999, for permanent residence status under the Nicaraguan Adjustment and Central American Relief Act

(NACARA). The Director, New York District, denied the application on September 19, 2005. The applicant filed a motion to re-open the decision on October 14, 2005. The director denied the motion on May 31, 2006. The applicant filed her application for TPS on the same day.

Accordingly, the applicant filed her application for TPS within 60 days of the date her Form I-485 application was no longer subject to further review. Consequently, the director's decision denying the application for failure to establish eligibility for late registration is withdrawn.

The second issue in this proceeding is whether the applicant has established 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 December 6, 2006, the applicant was requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The applicant has submitted the following documentation throughout the application process:

1. An October 13, 2005, sworn statement from [REDACTED], the applicant's sister, in which she stated that the applicant has lived with her since the applicant's arrival in the United States in 1992.
2. A March 30, 1999, sworn statement from [REDACTED] in which she certified that she had known the applicant for seven years [REDACTED] did not indicate her relationship with the applicant or the circumstances of their acquaintance.
3. A March 22, 1999, notarized statement from [REDACTED], in which she certified that she had known the applicant for seven years [REDACTED] did not indicate her relationship with the applicant or the circumstances of their acquaintance.
4. A March 22, 1999, notarized statement from [REDACTED] in which he certified that he had known the applicant for seven years. [REDACTED] did not indicate his relationship with the applicant or the circumstances of their acquaintance.
5. An October 12, 2005, sworn statement from [REDACTED] in which she stated that she has known the applicant since 1993 and that the applicant helped with babysitting her son in 1994.
6. An October 4, 2005, statement from [REDACTED], deputy director of the NYC Neighborhood WIC Program, in which she stated that they had "been able to verify" that the applicant "began activity with our WIC Program as long ago as 1994 and continuing at least through 1996." The applicant submitted a copy of a WIC card indicating that the applicant was listed as a proxy for [REDACTED] the applicant's sister. [REDACTED] did not indicate the source of the information that she used in verifying the applicant's activity with the WIC program, and the applicant submitted no additional documentation that would indicate her activity with the program.

7. Outpatient bills and other medical documentation from Metropolitan Hospital Center in New York, indicating that the applicant had been treated in the facility on various occasions from July 1998 through April 1999.
8. A July 28, 1999, letter from National Pediatrics Center in Corona, New York, certifying that, in 1995, the applicant was one of the caregivers for her niece, whom the pediatrician treated.
9. An October 5, 2005, sworn letter from [REDACTED] in which he certified that the applicant had been his tenant, residing with her sister, since November 20, 1995. In a February 8, 1999, sworn statement, [REDACTED] stated that he had known the applicant since November 1995.
10. A copy of a December 9, 1999, appointment letter to the applicant from the legacy Immigration and Naturalization Service.
11. A copy of the applicant's 1999 Form 1040, U.S. Individual Income Tax Return, showing that the applicant filed the return with the Internal Revenue Service October 26, 2000.

The director concluded that the applicant had failed to establish her 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 she has been living in the United States since 1992 and has never been arrested. However, the applicant submitted no additional documentation in support of her claim.

The record contains evidence of the applicant's presence and residence in the United States from 1992 to 1999, submitted in support of her Form I-485 application. The applicant, however, has not submitted sufficient evidence to establish her qualifying continuous residence or continuous physical presence in the United States during the period from 2000 to May 31, 2006, the date she filed her TPS application. Evidence of the applicant's presence and residence in the United States subsequent to 1999 consists solely of a statement from her sister, her sister's landlord, and a friend. The applicant submitted no contemporaneous documentation to establish her presence and residency in the United States during the qualifying period. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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.