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FILE: [REDACTED] OFFICE: California Service Center DATE: **JUL 30 2008**
[WAC 05 141 82137]

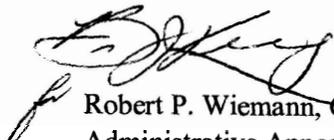
IN RE: Applicant: [REDACTED]

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 office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office 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 record reveals that the applicant filed his TPS application on February 18, 2005, under Citizenship and Immigration Services (CIS) receipt number WAC 05 141 82137. The director denied that application on May 18, 2006, after he determined that the applicant failed to establish he was eligible for late registration. A subsequent appeal from the director's decision was filed on June 21, 2006 and was summarily dismissed by the Chief of the AAO on October 31, 2006, because the applicant failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

On appeal, counsel states that a brief was submitted to the AAO and was received by the AAO on July 19, 2006. He further asks CIS to review the case based on the facts and brief submitted.

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.

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.

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.

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).

On February 9, 2006, 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 of his date of entry into the United States and evidence establishing his continuous residence and continuous physical presence in the United States during the requisite periods to the date of filing. In addition, the applicant was requested to submit a final court disposition of his arrest on July 26, 2000 by the Miami Police Department. The applicant, in response, provided evidence which the director determined established the applicant's qualifying residence and physical presence in the United States. The director, however, determined that the applicant had failed to establish he was eligible for late registration and denied the application on May 18, 2006.

On appeal, counsel states that the decision by the AAO is not justified since the applicant did in fact comply with the requirement of the appeal and submitted the additional evidence and/or brief in a timely manner.

A brief was submitted to the AAO on July 13, 2006, and was received by the AAO on July 19, 2006. However, the brief was returned to counsel on July 26, 2006, as the AAO did not yet have the applicant's appeal or A file at the time the brief was received. The brief will now be considered.

The applicant did not file his Form I-821, Application for Temporary Protected Status, within the initial registration period. Counsel states that the applicant did not file for TPS status prior to the deadline due to the fact that he was unaware that he could do so. Additionally, counsel states that the applicant had received a notice of the approval of an I-130, Petition for Alien Relative, filed on his behalf by his spouse. The approval of an I-130 petition is not an application for change of status but only establishes eligibility to file for adjustment of status as the spouse of a U.S. Citizen. The applicant has not submitted any evidence to show that a Form I-485, Application for Adjustment of Status, has been submitted. Therefore, he cannot establish eligibility for late initial registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS will be affirmed.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

It is noted on his May 18, 2006 Notice of Decision, the director erroneously stated that the applicant has submitted evidence to establish that he has resided and has been physically present in the United States since February 25, 1998. However, the applicant submitted a copy of his Nicaraguan passport which shows that he entered the United States at Miami on January 5, 1999. Therefore, he cannot establish continuous residence in the United States since December 30, 1998.

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.