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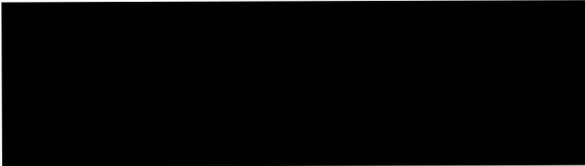
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JAN 05 2009

[EAC 08 047 51778, appeal]

[EAC 07 312 76056]

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:

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VCS), 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 applying for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The applicant filed the current application under after the initial registration period had closed. The VSC Director determined that the applicant had failed to establish he was eligible for late initial registration. The director also found that the applicant had not established that he had been continuously physically present in the United States since January 5, 1999 or that he had continuously resided in this country since December 30, 1998.

On appeal, counsel argues that the physical deportation of [REDACTED] in 2004 was an illegal deportation and therefore the applicant should not be considered as interrupting his continuous physical presence in the United States.

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.

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 initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record shows that the applicant filed his application with Citizenship and Immigration Services on July 31, 2007.

To qualify for late registration, an applicant must provide evidence that during the initial registration period, he or she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS is affirmed.

In removal proceedings held "in absentia" on February 12, 1990, an Immigration Judge (IJ), in Harlingen, Texas, ordered the applicant deported to Nicaragua. The record contains a Form I-205, Warrant of Removal/Deportation, issued by the Field Office Director of the Los Angeles, California, office of Citizenship and Immigration Services, (formerly the Immigration and Naturalization Service) on August 27, 2004, showing the applicant was deported from the United States on September 9, 2004.

The record reflects that on May 18, 2005, the applicant was arrested by an officer of United States Immigration and Customs Enforcement near the Andrade, California, Port of Entry. At the time of his arrest he stated that he had been deported on September 9, 2004, and that he had financed his trip back to this country by saving money from odd jobs he had been doing in Nicaragua..

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.

On appeal, counsel argues that the physical deportation of [redacted] in 2004 was an illegal deportation and therefore the applicant should not be considered as interrupting his continuous physical presence in the United States. Counsel submits evidence that his firm has filed a Petition for Review of the Decision of the Board of Immigration Appeals upholding the November 30, 2005 IJ deportation decision in the United States Court of Appeals for the Ninth Circuit Court. However, no action to invalidate the IJ's deportation order has been taken to date. It is noted that the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

The applicant was absent from the United States from September 9, 2004 until his reentry and arrest on May 18, 2005. His absence does not qualify as a brief, casual and innocent absence, because it was a result of an order of deportation. Therefore, he cannot establish continuous residence in the United States since December 30, 1998, or continuous physical presence in the United States since January 5, 1999. 8 C.F.R. § 244.2 (b) and (c). Consequently, the director's decision is affirmed for these two additional reasons.

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 temporary protected status has the burden of proving that he or she meets the requirements cited 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.