



U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

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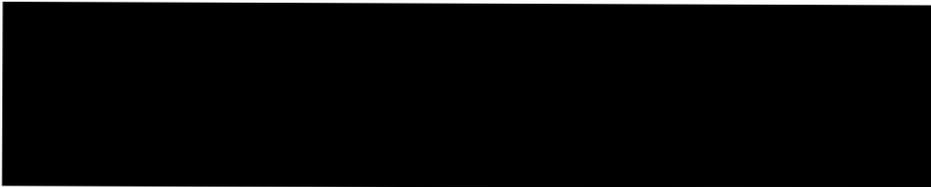
Applicant:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The applicant is 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 determined that the applicant failed to establish he had: 1) continuously resided in the United States since December 30, 1998; and 2) been continuously physically present in the United States since January 5, 1999. The director, therefore, denied the application.

On appeal, counsel states that the application was erroneously denied. Counsel also asserts that the applicant has submitted sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. In addition, the applicant submits evidence in an attempt to establish his qualifying continuous residence and 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 as 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.

The term *continuously physically present*, as used in 8 C.F.R. § 244.1, means actual physical presence in the United States since January 5, 1999. 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 used in 8 C.F.R. § 244.1 means residing in the United States for the entire period specified in the regulations and since December 30, 1998. 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. 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, 2010, upon the applicant's re-registration during the requisite 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 United States 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).

The record shows that the applicant filed his TPS application on February 28, 2008. On September 30, 2008, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States from January 5, 1999, to the filing date of the application. The applicant, in response, provided:

1. A copy of a Notice of Hearing dated May 15, 2008.
2. Copies of a personal statement from the applicant, and statements from [REDACTED], and [REDACTED]

3. Copies of a receipt from Social Security Administration dated April 7, 1994 and a Social Security Administration Statement dated February 20, 2007; a Florida identification card receipt indicating the applicant's identification card was issued on April 15, 1994; a State of Florida Office of Comptroller Remittance Advice dated November 2, 2000; a Physical/Drug Screen form dated March 17, 2002; a U.S. Department of Labor Certificate of Achievement awarded on September 11, 2003; a State of Florida Application for Vehicle/Vessel Certificate of Title and/or Registration for a Transfer of Title dated April 15, 2006; First Commercial Insurance Company Commercial Auto Coverage Part Business Auto Declarations dated March 29, 2005 and April 1, 2006; a Redland Insurance Company policy document with a policy period from August 2, 2007 to August 2, 2008; and U.S. Insurance Company Endorsements and Revised Declarations dated August 6, 2008.
4. Copies of 1999 through 2007 tax documents.
5. Envelopes addressed to the applicant date-stamped December 10, 2002, December 21, 2004 and December 18, 2006.

The director determined that the applicant failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

On appeal, counsel states that the application was erroneously denied and that the applicant has provided sufficient evidence to establish continuous residence and continuous physical presence. The applicant also submits additional evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period. Specifically, the applicant submits:

6. Copies of a letter from [REDACTED] OMS Delivery Corporation, with a printout from O.M.S. Sweetwater, showing activity for the period from August 22, 1998 through June 10, 2000, and statements from [REDACTED] and [REDACTED]
7. Copies of a Complaint to collect a debt for charges that began to occur on January 25, 2002 and a Notice to Appear dated July 20, 2007.
8. Copies of Account Transcripts for tax periods ending from December 31, 1999 through December 31, 2004.
9. Copies of cancelled checks deposits and withdrawals dated September 4, 2001 through February 14, 2008.

10. Copies of his Nicaraguan Passport.

11. Copies of his medical records dated from September 9, 2002 through March 28, 2006.

The applicant also resubmits evidence that is already part of the record.

The applicant's passport establishes the applicant's identity and nationality. In his statement, the applicant claims that he entered the United States in December 1993 and has remained in this country since that date. [REDACTED] states that she rented the applicant a room at her house at [REDACTED] from 1994 through 2005 and that the applicant always paid rent in cash. [REDACTED] states that he has known the applicant since 1994. [REDACTED] Personnel for RC Aluminum, states that the applicant was employed by her company from 1994 to 1996. [REDACTED] states that he has known the applicant since 1998. [REDACTED] states that he has known the applicant since childhood and that the applicant has been in the United States since 1994. [REDACTED] states that the applicant lived at her home at [REDACTED] from December 1993 to November 2005. [REDACTED] states that he has known the applicant since childhood and that he encountered the applicant in the United States in 1993. [REDACTED] stated in a February 4, 2008 letter that he treated the applicant.

[REDACTED] and [REDACTED] both claim that they owned the house at [REDACTED] where the applicant resided. In addition, [REDACTED] states that the applicant resided there from 1994 through 2005 and [REDACTED] states that the applicant resided there from December 2003 through 2005. These discrepancies have not been satisfactorily explained. [REDACTED] statement has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of his employment. It is further noted that [REDACTED] can only attest to the applicant's presence in the United States from 1994 through 1996. Similarly, [REDACTED] can only attest to the applicant's presence in the United States from August 22, 1998 through June 10, 2000 and [REDACTED] statement fails to indicate how long he has treated the applicant. [REDACTED] and [REDACTED] statements also have little evidentiary weight or probative value. These statements are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Thus, this evidence is of little probative value.

The applicant submitted tax documents for the years from 1999 through 2006. It is noted that the addresses shown on the copies of the tax returns differ from the addresses the applicant provided in his October 20, 2008 declaration. The 1999 through 2005 tax returns show an address of [REDACTED], Miami, Florida; and the 2006 return shows an address of [REDACTED], Miami, Florida. The applicant stated in his October 20, 2008 declaration that he had lived at the following addresses:

1993 -2005 – [REDACTED]
2006 - [REDACTED]
2007 – [REDACTED]
Current [REDACTED]

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The December 15, 2008 letter from [REDACTED] OMS Delivery Corporation, 1447 West Flagler Street Miami, Florida, states that the applicant had used their money services to “send remittances to his family in Nicaragua” since 1998. [REDACTED] further states that during “his regular monthly visits, Mr. [REDACTED] sent packages, documents, and money to his family.” The applicant also submitted a printout from O.M.S. Sweetwater (no address listed), showing “Activity By Client” for [REDACTED]. The printout shows [REDACTED] as consignee, and lists various amounts transferred to her during the period from August 22, 1998 through June 10, 2000. No address is shown for [REDACTED] and there is no indication of a connection to the applicant, or where the funds were sent, other than the code “CAM” under the “Dst” column which has not been explained. While [REDACTED] stated that the applicant made “regular monthly visits”, the printout reflects five transfers in January 1999; one in February 1999, and none between February 8, 1999 and October 19, 1999. The printout indicates transfers to [REDACTED] on an at-least monthly basis from November 1999 through June 2000, however, that cannot establish the applicant’s continuous residence or continuous physical presence during the requisite period. The applicant did not provide any receipts or other evidence to support the documentation from O.M.S. and/or O.M.S. Sweetwater, therefore, it is of little probative value in establishing the applicant’s continuous residence and continuous physical presence for the entire requisite periods.

The statement from the Social Security Administration lists wages for the applicant in 1994, 1996, 2001 through 2005, and indicates that wages for 2006 had not yet been reported. No wages were reported for 1998, 1999, and 2000. The document indicates the applicant worked in the United States during the reported years, but cannot establish the applicant’s qualifying continuous residence and continuous physical presence throughout the entire requisite period. The remaining evidence is all dated prior to or subsequent to the dates required to establish continuous residence and continuous physical presence in the United States. Therefore, this evidence is also of little or no probative value.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence from December 30, 1998 or continuous physical presence in the United States from January 5, 1999 to the date he filed the TPS application. He has, therefore, failed to establish that he has met the criteria 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.

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 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.