

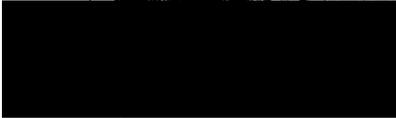
PUBLIC COPY

U.S. Department of Homeland Security
Citizenship and Immigration Services

MI

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

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536



File:



OFFICE: Texas Service Center

DATE:

DEC 01 2003

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 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. §103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann for
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 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 determined that the applicant failed to submit evidence to establish that she was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. The director, therefore, denied the application.

On appeal, the applicant maintains that she is eligible to file for TPS after the initial registration period. She asserts that the director acknowledged receipt of the evidence, but he nevertheless denied her application stating that the evidence was not sufficient to establish that she was eligible to file for TPS after the initial registration period. The applicant submits additional evidence of her residence in the United States.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 condition described in paragraph (f)(2) of this section.

Continuously physically present 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.

Continuously resided 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 in the United States 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 current extension valid until January 5, 2005, upon the applicant's re-registration during the requisite time period.

The record reflects that the applicant filed her TPS application on July 1, 2002. In a notice of intent to deny dated November

14, 2002, the applicant was requested to submit: (1) evidence to show that she has continuously resided in the United States since December 30, 1998; (2) evidence to show that she has been continuously physically present in the United States since January 5, 1999; and (3) evidence to establish that she was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999.

In response to the notice, the applicant submitted an affidavit from Aurora Aguilar, who stated she has known the applicant since 1997; a copy of her Florida driver's license, issued on April 10, 1998; copies of pages from her Nicaraguan passport; a health insurance card for the Health and Accident Coverage (HAC) Program, U.S. Agency for International Development, issued on May 28, 1991; a diploma and certificate of general education development from the Waukesha County Technical College dated November 19, 1992; and medical records dated March 27, 2001 and June 6, 2001. Because the applicant's response did not contain all the requested information, the director denied the application.

Aliens applying under the provisions for late initial registration must prove that they are eligible because during the initial registration period of January 5, 1999 through August 20, 1999, they fell within the provisions described in paragraph (f)(2) above.

The applicant, on appeal, submits a paycheck in her name issued by Kiya Inc., Miami, Florida, on September 18, 1999, as additional evidence of her residence in the United States. She maintains that the evidence she has furnished establishes that she is eligible for late registration. It is noted that the applicant's passport reflects that she entered the United States on January 17, 1998 as a B-1 nonimmigrant visitor. In order to qualify for late registration as a nonimmigrant, an applicant must provide evidence that, at the time of the initial registration period of January 5, 1999 through August 20, 1999, she was, among other criteria listed above, in a valid nonimmigrant status. If the qualifying condition has expired or been terminated, the individual must file an application for TPS within 60 days of the expiration or termination of the qualifying condition in order to be considered for late initial registration. The applicant has not shown that she maintained status as a nonimmigrant through August 20, 1999. Furthermore, she has not shown that she filed an application for late registration within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section. The applicant has not demonstrated eligibility for late registration and has not overcome the findings of the director pursuant to 8 C.F.R. § 244.2(f)(2).

The burden of proof is upon the applicant to establish that 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.