



PUBLIC COPY

U.S. Department of Justice

Immigration and Naturalization Service

M1

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



OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE:  Office: Texas Service Center

Date:

FEB 14 2003

IN RE: Applicant: 

APPLICATION: Application for Temporary Protected Status under Section 244 of
the Immigration and Nationality Act, 8 U.S.C. § 1254

IN BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 the Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

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 (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nicaragua who claims she was admitted to the United States as a nonimmigrant visitor in January 1998. Service records only indicate one entry on August 11, 1999. The applicant filed the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on June 5, 2002. The director denied the application because the applicant failed to establish she had been residing in the United States since December 30, 1998.

On appeal, the applicant states that after she arrived in January 1998 she remained in the United States until March 1999 when she returned to Nicaragua to renew her visa.

The record contains a copy of the applicant's Nicaraguan passport which was issued to her on July 26, 1999 in Nicaragua, and a copy of a U.S. B1/B2 nonimmigrant visa which was issued to her on July 28, 1999, in Managua. The passport contains a stamp showing admission at Miami on August 11, 1998. She provided no evidence of her prior entry. On her I-821 Application for TPS she claimed entry on August 14, 1999 and made no mention of an earlier entry. Her application also included money transfer forms, the earliest dated October 28, 1999. On appeal she submits additional handwritten forms dated April and May 1998 and an affidavit stating she had lived in Miami since January 1998. The applicant gave no explanation as to why these earlier documents were not included with her application.

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.

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.

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.

To qualify for late initial registration the applicant must provide evidence that during the initial registration period from January 5, 1999 through August 20, 1999, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant. (A marriage must occur prior to the initial registration period of January 5, 1999 to August 5, 1999.)

The burden of proof is upon the applicant to establish that he or she meets the above requirements for late registration. Applicants shall submit all documentation as required in the instructions or requested by the Service. 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 applicant has failed to provide credible evidence that she meets the residence and physical requirements. Additionally, she

has failed to provide evidence that she meets any of the criteria for late filing. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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.