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U.S. Citizenship
and Immigration
Services



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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: DEC 07 2004
[SRC 04 056 53783]

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: Self-represented

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
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 stated to be 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 denied the application because the applicant failed to establish that she was eligible for late registration. The director also found that the applicant had failed to establish her qualifying continuous physical presence in the United States during the requisite period. In addition, the director found that the applicant failed to submit photo identification or a national identity document bearing a photograph and/or fingerprint.

On appeal, the applicant submits a statement and additional evidence.

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.

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.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until July 5, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for Nicaraguans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed her initial TPS application with Citizenship and Immigration Services (CIS), on December 17, 2003.

The burden of proof is upon the applicant to establish that 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed her application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, she met one of the requirements listed above at 8 C.F.R. § 244.2(f)(2), and she had filed an application for late registration within 60 days of the expiration or termination of those conditions. 8 C.F.R. § 244.2(g).

On January 8, 2004, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit: evidence establishing her qualifying continuous physical presence in the United States during the requisite period; and a photo identification or a national identity document bearing a photograph and or fingerprint. The applicant, in response, provided documentation relating only to her residence and physical presence in the United States.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on January 28, 2004.

On appeal, the applicant states that she did not have the correct information and feared being deported. The applicant does not submit any additional evidence regarding her eligibility for late registration.

The applicant submitted evidence in an attempt to establish her qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file the Form I-821, Application for Temporary Protected Status, within the initial registration period. The reasons provided by the applicant for not filing during the initial registration period do not comport with the regulatory requirements for late registration. It is noted that on the Form I-765, Application for Employment Authorization, the applicant indicated both her manner of entry into the United States and her current immigration status as entry without inspection (EWI), while on the Form I-821, the applicant indicated that she entered the United States without inspection, and listed her current immigration status as an F-1, nonimmigrant student. The applicant, however, presented no evidence to substantiate that she had been granted any type of nonimmigrant status. The applicant has not submitted any evidence to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish her eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established her continuous physical presence in the United States since January 5, 1999.

As stated above, the applicant was requested on January 8, 2004, to submit evidence establishing her qualifying continuous physical presence in the United States. In response, the applicant submitted the following documentation:

1. Photocopies of two invoices in the applicant's name from a produce company and dated 3/3/99 and 4/10/99;
2. A photocopy of a Florida Power & Light Company billing statement dated July 22, 1999; and
3. A photocopy of a Bell South billing statement dated June 8, 1999.

The director concluded that the applicant had failed to establish her qualifying continuous physical presence in the United States during the requisite period and denied the application. The director's decision noted that the record contained no information for the years 2000 through 2003.

On appeal, the applicant states that she has been living in the United States since 1997, and has evidence to prove that she has lived here since that date. In support of the appeal, the applicant submits the following documentation:

1. A photocopy of a Gigante Express money transfer receipt dated June 26, 1999;
2. A photocopy of a Sedano's Pharmacy & Discount prescription receipt dated September 18, 1999;
3. Photocopies of utility meter billing statements dated June 22, 1999, August 22, 1999, September 21, 1999, and October 20, 1999; and,
4. A generic receipt dated "5/29/99" from [REDACTED] Sweetwater, Florida.

The applicant has not submitted any evidence to establish her qualifying continuous physical presence in the United States from the year 2000 to the present. In addition, it is noted that the Florida Power & Light and Bell South billing statements, along with the Gigante Express and Sedano's Pharmacy & Discount receipts appear to have been altered. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant, therefore, has failed to establish that she 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 on this ground will also be affirmed.

The third issue in this proceeding is the director's finding that the applicant failed to submit photo identification or a national identity document bearing a photograph and/or fingerprint. On appeal, the applicant again failed to submit this evidence of her nationality and identity. It also is noted that the record does not contain an English translation of the submitted birth certificate. The applicant has not overcome this finding of the director.

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.