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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[redacted]

FILE: [redacted] Office: Texas Service Center Date: MAR 03 2004
SRC 02 236 53003

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:

[redacted]

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.

Cindy N. Gomez 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. § 1254a.

The director determined that the applicant failed to submit evidence to establish that he 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, counsel asserts that the director's decision was entered in error. He submits additional evidence to establish his claim that the applicant had an application for adjustment of status pending during the registration period.

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 § 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.

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.

The term *continuously physically present* as used in 8 C.F.R. § 244.1 means actual physical presence in the United States for the entire period specified in the regulations and 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.

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

Section 212(a)(2) of the Act, 8 U.S.C. § 1182(a)(2), provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

> (A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of --
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or….

The record reflects that the applicant filed his TPS application on July 1, 2002. In a notice of intent to deny dated November 18, 2002, the applicant was requested to submit a photo identification, and evidence to establish that he was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. Because the applicant's response did not contain all of the requested information, the director denied the application.

Aliens applying under the provisions for late initial registration must provide evidence to 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 8 C.F.R. § 244.2(f)(2) (listed above). As provided in 8 C.F.R. § 244.2(g), the TPS application must be filed within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2).

The record reflects that on July 25, 1997, an immigration judge denied the applicant's application for suspension of deportation and granted the applicant voluntary departure until October 27, 1997, with an alternate order of deportation to Nicaragua. The

applicant appealed the decision of the immigration judge to the Board of Immigration Appeals (BIA). On June 22, 1998, the BIA remanded the case to the immigration judge in order to allow the applicant to apply for adjustment of status under section 202 of Public Law 105-100 of the Nicaraguan Adjustment and Central American Relief Act (NACARA). At a master hearing on July 23, 1998, the applicant sought leave to file his application for adjustment of status. At a subsequent hearing on December 17, 1998, the applicant sought further leave to apply for a waiver of inadmissibility, pursuant to section 212(h) of the Act, based on his conviction of attempted armed robbery and aggravated battery on October 13, 1995, in Dade County, Florida.

The immigration judge, on August 27, 1999, found that the applicant had failed to meet his burden of establishing that a grant of section 212(h) relief was warranted in the exercise of discretion and denied the application for waiver of grounds of inadmissibility. The immigration judge further found that the applicant was ineligible to adjust status under section 202 of the NACARA since adjustment of status may not be granted unless the waiver of inadmissibility has first been approved. The applicant appealed the decision of the immigration judge to the BIA. On March 13, 2002, the BIA dismissed the appeal.

Based on the evidence contained in the record, the applicant, during the initial registration period from January 5, 1999 to August 20, 1999, had an application for relief for removal that was pending or subject to further review or appeal. The BIA dismissed the appeal regarding this request for relief on March 13, 2002. However, the applicant did not file the Form I-821, Application for Temporary Status, until July 1, 2002. 8 C.F.R. § 244.2(g) clearly states that the application must have been filed within 60 days following the termination of the relief. The appeal before the BIA exhausted the applicant's administrative relief options. To qualify under this late registration provision, the applicant should have filed the TPS application on or before May 13, 2002. The application, however, was filed on July 1, 2002. Therefore, the applicant has not overcome this portion of the director's decision.

In addition, the record reflects that the applicant was found by an immigration judge to be inadmissible to the United States, pursuant to section 212(a)(2)(A)(i)(I) of the Act, based on his convictions of attempted armed robbery and aggravated battery, found to involve moral turpitude. The immigration judge noted

that, apart from the above conviction, the applicant also had several juvenile arrests for burglary of an unoccupied dwelling, grand theft, criminal mischief, and battery which resulted in adjudications of delinquency. The immigration judge, therefore, denied the application for the waiver of grounds of inadmissibility. It is noted that the BIA, in its decision to dismiss the applicant's appeal on March 13, 2002, stated that "upon review of the record, we are not persuaded that the Immigration Judge's ultimate resolution of this case was in error."

The applicant is, therefore, also ineligible for TPS because he is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act. There is no waiver available to an alien found inadmissible under this section pursuant to 8 C.F.R. § 244.3(c)(1). Furthermore, it is noted that, although the applicant furnished the arrest reports for his arrests, he failed to submit the court's final dispositions of these arrests.

The burden of proof is upon the applicant to establish that he 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. The appeal will be dismissed.

ORDER: The appeal is dismissed.