



U.S. Citizenship
and Immigration
Services

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FILE:



Office: TEXAS SERVICE CENTER

Date:

MAY 25 2004

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 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, 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 establish that he was eligible for late initial registration. The director, therefore, denied the application.

On appeal, the applicant states that it appears his application was denied based on the late arrival of his forms. He asserts, however, that the forms were mailed on time, but that they were returned to him because of a missing signature.

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.

The term *brief, casual, and innocent absence* as used 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.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The initial registration period for Nicaraguans was from January 5, 1999, through August 20, 1999. The record reflects that the applicant filed his TPS application on August 1, 2002.

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 Citizenship and Immigration Services (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 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).

On March 10, 2003, the applicant was requested to submit evidence to show that he had continuously resided in the United States since December 30, 1998, and 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.

In order to qualify for late registration, the applicant must provide evidence that, at the time of the initial registration period of January 5, 1999 through August 20, 1999, he was, among other criteria listed by the director, and as described in 8 C.F.R. § 244.2(f)(2) (listed above), in a valid nonimmigrant status or had been granted voluntary departure or any relief from removal during the initial registration period. The director maintained that if the qualifying condition or application has expired or been terminated, the individual must file

within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. See 8 C.F.R. 244.2(g).

The applicant submitted a letter and a school transcript from the University of South Carolina to show that the applicant was registered from January 12, 1998 through June 4, 1999. CIS computer records reflect that the applicant was admitted to the United States as a J-1 nonimmigrant on August 13, 1997, through July 13, 1999. The applicant did not file his application within the 60-day period following the expiration of his nonimmigrant status. In this case, since the applicant's nonimmigrant status terminated on July 13, 1999, the applicant's 60-day period to file a late application expired on September 13, 1999.

The applicant, on appeal, states that his TPS application was timely mailed but it was returned to him because of a missing signature; however, he sent it back the same day. The record reflects that the TPS application was received at the Texas Service Center on July 8, 2002. The application was subsequently returned to the applicant. 8 C.F.R. § 103.2(a)(7) states, in part:

An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and...shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable will not retain a filing date.

The record, in this case, reflects that the TPS application was properly received by the Texas Service Center on August 1, 2002. The applicant, therefore, failed to file his application during the allotted 60-day late registration period pursuant to 8 C.F.R. § 244.2(g). The director's decision to deny the application will be affirmed.

Beyond the decision of the director, the record indicates that the applicant was outside of the United States from July 13, 1999 through August 4, 2000. Therefore, the applicant has failed to establish that he satisfies the criteria for continuous residence since December 30, 1998, and continuous physical presence since January 5, 1999, as described in 8 C.F.R. § 244.2(b) and (c). As the appeal will be dismissed on the grounds discussed above, these issues need not be examined further.

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.

ORDER: The appeal is dismissed.