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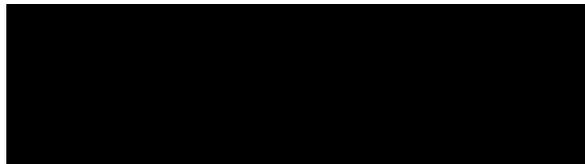


FILE: [REDACTED]  
[EAC 03 218 50954]

Office: VERMONT SERVICE CENTER

Date: AUG 29 2005

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, Vermont 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 applying for 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 for TPS because the applicant failed to establish he was eligible for late registration.

On appeal, the applicant states:

As I show with the copy that I am attaching, I have an application for change my status which was pending and is pending at this moment. When you required me the proof that I was eligible to register for the TPS under the late initial registration provisions, I couldn't send you anything because some years ago I suffered a flood in my home, so I lost a lot of legal papers. The only proof that I could find is this receipt, but I know that in your offices you have all my record. Please, reconsider my case.

The applicant forwards a receipt notice showing that Martha E. Palacios filed a Form I-130, Petition for Alien Relative, in his behalf on April 30, 2001.

Section 244(c) of the Act, and the related regulations at 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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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.

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. The initial registration period for Nicaraguans was from January 5, 1999, through August 20, 1999. The record shows that the applicant filed his application with Citizenship and Immigration Services (CIS), on July 2, 2003.

To qualify for late registration, an applicant must provide evidence that during the initial registration period, he or she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

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 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 his own statements. 8 C.F.R. § 244.9(b).

On August 19, 2003, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in the regulations at 8 C.F.R. § 244.2(f)(2). The applicant did not respond to the director's request.

On appeal, the applicant forwards a receipt notice showing that [REDACTED] filed a Form I-130, Petition for Alien Relative, in his behalf on April 30, 2001. The record contains the visa petition and reflects that it was approved in the applicant's behalf on December 21, 2004. The applicant believes he is eligible for late registration under 8 C.F.R. § 244.2(f)(2)(ii) since he is the beneficiary of a visa petition. However, to qualify for late registration, an applicant must provide evidence that they were eligible for late registration during the initial registration period from January 5, 1999 through August 20, 1999. Individuals, such as the applicant, who are awaiting approval of a petition or preference allocation for an immigrant visa under section 203 of

the Act are not eligible for late registration under 8 C.F.R. § 244.2(f)(2). It is noted that the evidence does not indicate that the applicant filed for adjustment of status.

On appeal, the applicant submitted evidence in an attempt to establish his continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Application for Temporary Protected Status within the initial registration period. The applicant has not submitted any evidence to establish that he has met the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS is affirmed.

It is noted that the record contains a copy of the applicant's Republic of Nicaragua passport. The passport was issued to him in Nicaragua on March 26, 2003. Therefore, he could not have been in continuous residence in the United States since December 30, 1998 until the date he filed his application for TPS.

Beyond the decision of the director, it also is found that the applicant has provided insufficient evidence to establish his continuous residence and continuous physical presence during the requisite time periods. 8 C.F.R. § 244.2 (b) and (c). Therefore, the application cannot be approved for these additional reasons.

An alien applying for TPS 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.