



U.S. Citizenship
and Immigration
Services

identifying data deleted to
protect identity of applicant

FILED

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FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: 05 06 2005

[WAC 05 085 70198]

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, California 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 is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director noted that the applicant's prior Form I-821, Application for Temporary Protected Status, had been denied because she had not established prima facie eligibility for late registration. The director determined that since the initial application for TPS had not been granted, the applicant was ineligible for re-registration.

On appeal, the applicant states that she came into the United States on July 4, 1998, without inspection at or near Brownsville, Texas and that she has a pending Immigration Court hearing. She asserts that she is the spouse of an alien currently eligible to be a TPS registrant and indicates that she is submitting a copy of her marriage certificate as "Exhibit C." However, that exhibit was not forwarded on appeal. The applicant asserts her eligibility for TPS and submits additional evidence of continuous residence and continuous physical presence in the United States in support of her claim.

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

The record reflects that the applicant filed her first Form I-821 after the initial registration period. That application was denied on August 16, 2002 because the applicant had failed to establish that she was eligible for late registration. The applicant did not file a timely appeal on that determination. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The record shows that the fee was paid for the applicant's second Form I-821 on December 19, 2004. Since the initial application was denied and this subsequent application was filed after the latest initial registration period ended on August 20, 1999, it must be considered as a late registration.

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.

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.

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 her initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on June 21, 2002, and this application on December 19, 2004.

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 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 July 15, 2002, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in the regulations at 8 C.F.R. § 244.2(f)(2). The applicant, in response, provided identity documentation and evidence relating to her continuous residence and continuous physical presence in this country along with copies of documents relating to her hearing before an Immigration Judge that was scheduled to be held on "a date to be set" in San Antonio, Texas.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on August 16, 2002. On appeal, the applicant offered additional evidence concerning her continuous residence and continuous physical presence in this country. The applicant filed a late appeal to the director's determination that was rejected by the AAO.

The record contains a copy of a birth certificate for the applicant's son Christian [REDACTED] born on April 5, 2003, in Miami-Dade County, Florida showing [REDACTED] as his father, along with a Form I-797C, Receipt Notice, showing that [REDACTED] was approved for TPS status on July 26, 2005. The marriage certificate is not contained in the record. In addition, in order to be eligible for late registration, the qualifying relationship must have existed during the initial registration period. 8 C.F.R. § 244.2(f)(2). The applicant stated on her initial application that she filed with CIS on June 21, 2002, that her marital status was single at that time. Since the applicant was not the spouse of an alien eligible to be a TPS registrant during the initial registration period, she is not eligible for late registration for that reason.

The applicant has submitted evidence in an attempt to establish her qualifying continuous residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file an approvable Application for Temporary Protected Status within the initial registration period. The applicant has not submitted any evidence to establish that she 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.

The record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated July 21, 2002, indicating that the United States Border Patrol apprehended the applicant after she traveled to Laredo, Texas from Florida to obtain custody of her daughter at the Laredo North Border Patrol Station. At that time she stated that she left Nicaragua on October 1, 1998, to travel to the United States and that she crossed the Rio Grande River and illegally entered the United States near the Brownville Port of Entry on July 4, 1998. She also stated that she had resided in this country since her illegal entry. Notwithstanding her statement to the Border Patrol Officer, the record contains the applicant's passport that was issued to her in Nicaragua on April 15, 1999. Therefore, she could not have been in continuous residence since December 30, 1998 and in continuous physical presence since January 5, 1999 in the United States until April 15, 1999, the date her passport was issued to her abroad.

Beyond the decision of the director, the applicant has provided insufficient evidence to establish her 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.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.