



U.S. Citizenship
and Immigration
Services

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invasion of personal privacy**



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FILE: [REDACTED]
[SRC 04 001 54894]

Office: TEXAS SERVICE CENTER Date:

JAN 26 2005

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:

PUBLIC COPY

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.

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 (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 initial registration.

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

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 September 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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). 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. 8 C.F.R. § 244.2(g).

On January 29, 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 continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999. In addition, the applicant was requested to submit an original birth certificate with English translation. The applicant, in response, provided only documentation relating 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 February 23, 2004.

On appeal, the applicant states that she has been living in the United States "since 1998." She asks for "the opportunity [sic] to continue being legal in this country in which with a lot of difficulty [she has] lived here without having the opportunity of being employed and also given the chance to pay [her] taxes." She further states that she did not have the correct information and was told by others that she could be deported. In support of the appeal, the applicant submits additional evidence in her name consisting of: a sales receipt dated "5/6/99;" a Gacela Delivery receipt dated "2/7/99;" and eleven "O.M.S. Delivery" receipts dated between January and December 1999.

The applicant has not offered any explanation or evidence regarding her failure to file her Form I-821, Application for Temporary Protected Status, within the initial registration period. 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, Application for Temporary Protected Status, 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 decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999. It is noted that the letter dated September 15, 1999, from [REDACTED] stating that the applicant was employed to clean his home three times a week in 1999, has little evidentiary value as it does not conform to the regulatory provisions of 8 C.F.R. § 244.9(a)(2)(i)(A) through (D). Further, in response to the director's request for additional evidence, this September 15, 1999, letter has been altered to reflect another spelling of the applicant's name and indicates that she worked from "1999 through 2000." The Bell South payment receipt dated "11/24/98" bears no name, and there is no other evidence indicating that this account number belonged to the applicant. The evidence for the years 2000 through 2003, consists of generic receipts that cannot be directly linked to the applicant. In addition, the applicant indicated on her Form I-821, that she entered the United States on "9-30-97." However, on appeal she indicates that she has been in the United States "since 1998." The applicant has not submitted sufficient evidence to establish her qualifying continuous residence or continuous physical presence in the United States during the requisite periods. She has

failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Therefore, the application must also be denied for these reasons.

It is also noted that on the Form I-821, the applicant indicated both her country of birth and country of citizenship as Nicaragua, while on the Form I-765, the applicant indicated her country of birth as El Salvador. The record does not contain a copy of any birth certificate. The applicant did not respond to the director's request for her original birth certificate with English translation. It must be concluded that the applicant also has not conclusively established her nationality.

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.