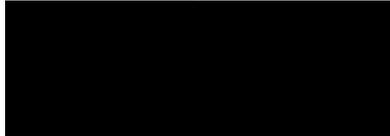




U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[SRC 03 193 54433]

Office: Texas Service Center

Date: JUN 21 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:

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 claims to be a 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 because the applicant failed to establish that she was eligible for late registration.

On appeal, the applicant asserts her claim of eligibility for TPS and submits evidence in support of her claim.

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 TPS 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 parole; 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. The initial registration period for Nicaraguans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed her initial application with Citizenship and Immigration Services (CIS), on July 1, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

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 September 9, 2003, the applicant was requested to submit evidence to establish 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 as of December 30, 1998, and photo identification. In response, the applicant submitted copies of her Nicaraguan passport issued on July 29, 2003; a copy of her Florida State Identification card issued on August 21, 2003; and some evidence in an attempt to establish her continuous residence in the United States. However, she did not submit any evidence to establish her eligibility for late registration. The director, therefore, determined that the applicant had failed to establish she was eligible for late registration and denied the application on October 3, 2003. It is noted that according to CIS' electronic systems, the director sent the denial notice to the applicant on December 20, 2003.

On appeal, the applicant asserts that she has lived in the United States since 1998, and that she has submitted all the evidence to prove and demonstrate that she has been living in the United States since that time. The applicant also submits some evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In addition, the applicant submits a copy of an October 13, 1998 order from the Immigration Court in San Antonio, Texas, regarding the immigration judge's decision on her removal proceedings.

A review of the record of proceedings reflects that the applicant failed to appear at a scheduled hearing and was, therefore, ordered removed from the United States on October 13, 1998, based on her apprehension by the United States Border Patrol on July 12, 1998, near Laredo, Texas. CIS regulations require a late registration to be filed within a 60-day period immediately following the expiration or termination of conditions that made the applicant eligible for late registration. 8 C.F.R. § 244.2(g). In this case, since the applicant was ordered removed on October 13, 1998, her 60-day period for late registration actually expired on December 27, 1998. The applicant filed her application with the director on July 1, 2003. The applicant did not file her application during the initial registration period or during the allotted 60-day late registration period described in 8 C.F.R. § 244.2(g). Consequently, the director's decision to deny the application for TPS late registration will be affirmed.

Further, it is noted 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.

Beyond the decision of the director, it is also noted that the applicant claimed on page one of her application for temporary protected status that she is a citizen of Honduras; however, on page two of the application and

on the application for employment authorization, she indicated that she is a citizen of Nicaragua. The record of proceedings contains a copy of her passport and birth certificate from Nicaragua.

The Board, in *Ognibene*, further held that under appropriate circumstances in a given proceeding of law, the operative nationality of a dual national may be determined by his conduct without affording him the opportunity to elect which of his nationalities he will exercise. The General Counsel, in GENCO Op. 84-22 (July 13, 1984), reinforced this concept and states, "In interpreting a law which turns on nationality, the individual's conduct with regard to a particular nation may be examined. An individual's conduct determines his 'operative nationality.' The 'operative nationality' is determined by allowing the individual to elect which nationality to exercise. The nationality claimed or established by the nonimmigrant alien when he enters the United States must be regarded as his sole nationality for the duration of his stay in the United States." (Emphasis in original).

Additionally, the General Counsel, in GENCO Op. 92-34 (August 7, 1992), concluded that the Service may, in the exercise of discretion, deny TPS in the case of an alien who, although a national of a foreign state designated for TPS, is also a national of another foreign state that has not been designated for TPS. The General Counsel explains that "TPS is not a provision designated to create a general right to remain in the United States. Rather, the statute provides a regularized means of granting haven to aliens who, because of extraordinary and temporary circumstances, cannot return to their home country in safety. See *id.* 244A(b)(1)(A), (B), and (C), 8 U.S.C. § 1254(b)(1)(a), (b), and (c)."

The applicant was apprehended by the United States Border Patrol on July 12, 1998, near Laredo, Texas, and placed in removal proceedings. It is also noted that the applicant presented herself as a citizen of Guatemala to the Border Patrol agents at that time.

The nationality the applicant claimed and/or established at the time she first came into contact with the Service (now CIS) was that of Guatemala. On subsequent filings before the Service, including her application for temporary protected status, the applicant continued to present herself as a Honduran and as a Nicaraguan. Therefore, Guatemalan citizenship must be regarded as her operative nationality during these proceedings. As a citizen and national of Guatemala, the applicant is ineligible for the provisions of section 244 of the Act. 8 C.F.R. § 244.2(a). Therefore, the application will be denied for this reason.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish her qualifying continuous physical presence and continuous residence during the requisite time periods. 8 C.F.R. § 244.2(b) and (c). The evidence submitted by the applicant, on appeal, post-dates the requisite time period for continuous residence and physical presence in the United States by seven months. It is also noted that the copies of receipts submitted by the applicant on appeal from the office of Dr. [REDACTED] in Red Bank, New Jersey, dated July 1, 1999, July 31, 1999, and November 20, 1999, appear to have been altered. The original name on these receipts has been covered-over and the applicant's name inserted in its place. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582

(BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the apparent alteration of the documents as noted above. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to satisfy the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Therefore, the application will also be denied for these 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.