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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: MAY 10 2005

[EAC 01 261 51255]

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, Vermont 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 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 he was eligible for late registration.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

On appeal, the applicant submits a brief statement and additional documentation.

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.

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 designated by the Attorney General for Nicaraguans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his initial Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on August 31, 2001.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he 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 he 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 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 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 April 24, 2002, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). He was also requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods, as well as a final court disposition of his arrest on November 2, 1998, by the Union City, New Jersey, Police Department. In response, the applicant provided documentation relating to his residence and physical presence in the United States and a court document relating to his arrest. He did not present evidence of his eligibility for late registration.

On September 9, 2003, the applicant was again requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). In response, the applicant provided additional documentation relating to his residence and physical presence in the United States. He again failed to present evidence of his eligibility for late registration.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on January 20, 2004.

On appeal, the applicant states that is a native of Nicaragua who came to the United States on July 6, 1985, and is unable to return to his country because he grew up in the United States and has no relatives remaining in Nicaragua. The applicant also states that he was included as a dependent in the request for asylum in the United States filed by his father [REDACTED]

It appears that the applicant is implying that he is eligible for late registration due to his father's status. However, a review of the alien registration file relating to his father reflects that the father's application for permanent residence under NACARA was denied on September 15, 2003. A similar review of the alien registration file relating to the applicant's mother, [REDACTED] reflects that her application for permanent residence under NACARA was approved on May 2, 2002. There is no evidence contained in the parents' files that either of them is currently eligible to be a TPS registrant.

Although the applicant has submitted evidence in an attempt to establish his residence and physical presence in the United States, this evidence does not mitigate the applicant's failure to file his Form I-821 within the initial registration period. The applicant has not submitted any evidence to establish that he 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.

It is noted that the record reflects that the applicant was arrested on November 2, 1998, by the Union City, New Jersey, Police Department for (1) one count of Distributing Heroin/Cocaine [in violation of 2C:35-5B(3)], and (2) one count of CDS on School Property [in violation of 2C:35-7]. On March 11, 1999, charge (1) was amended to Possession of Drug Paraphernalia [in violation of 2C:36-2], for which the applicant received a conditional discharge (diversion program term of 6 months) and was fined. Charge (2) was amended to Failure to Give CDS to Police [in violation of 2C:35-10(C)], and was dismissed.

It is further noted that the applicant was ordered deported from the United States by an immigration judge on August 15, 1996. That order remains outstanding.

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.