

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

MI



FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: OCT 03 2005
[EAC 03 202 50804]

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 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 she was eligible for late registration.

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

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 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 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.

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 TPS application with Citizenship and Immigration Services (CIS) on June 23, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period 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 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).

On September 23, 2003, 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, in response, stated in a letter dated October 1, 2003, that she "had cases pending with the Immigration and Naturalization Service (now CIS) before January 5, 1999." She provided various documents relating to prior proceedings before the Immigration and Naturalization Service.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on May 5, 2004.

On appeal, the applicant asserts that she qualifies for late registration because she had an asylum application pending during the initial registration period for Nicaraguans. She submits copies of documents contained in the record of proceedings.

The record reveals that the applicant was apprehended by the United States Border Patrol on October 12, 1993, near Sarita, Texas, after having entered the United States without inspection near Brownsville, Texas. The applicant was placed in deportation proceedings.

On April 29, 1994, the applicant applied for asylum and for withholding of removal. On December 30, 1994, an Immigration Judge in Miami, Florida, denied the applicant's applications for asylum and for withholding of removal, and granted the applicant the privilege of voluntary departure to Nicaragua on or before January 20,

1995, with an alternate order of deportation if the applicant failed to depart the United States in compliance with the grant of voluntary departure.

On December 29, 1994, the applicant filed an appeal from the order of the Immigration Judge with the Board of Immigration Appeals (BIA). On July 13, 1995, the BIA dismissed the applicant's appeal and granted her the privilege of voluntary departure to Nicaragua within 30 days of the dismissal decision. The applicant failed to depart the United States within 30 days of the BIA's decision as ordered.

On October 23, 1995, the District Director, Miami, issued a Form I-166 letter ordering the applicant to report to the Miami District Office on December 8, 1995, for deportation to Nicaragua. The applicant failed to appear to be deported as ordered. On January 21, 1995, the District Director, Miami, issued a Form I-205, Warrant of Deportation.

The record further reveals that, while the applicant's appeal from the Immigration Judge's order was pending before the BIA, the applicant departed the United States and applied for admission to Canada at Blackpool, Quebec, on September 29, 1995. She subsequently filed an asylum application in Canada. Her request for asylum in Canada was subsequently denied, and she was returned to the United States by Canadian Immigration authorities at the Champlain, New York, Port of Entry on October 21, 1998. It is noted that the applicant's departure while a Warrant of Deportation was outstanding constituted deportation from the United States.

On July 29, 2000, the applicant married [REDACTED], a naturalized United States citizen. On May 8, 2002, Mr. [REDACTED] filed a Form I-130, Petition for Alien Relative, on the applicant's behalf. The petition was approved on October 31, 2002.

The applicant subsequently filed a Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, on May 7, 2002. The director of the Vermont Service Center denied the application on November 25, 2002. The applicant filed an appeal from the denial on December 16, 2002, and the appeal was dismissed by the Director of the AAO on June 11, 2003. As stated previously, the applicant filed her Form I-821, Application for Temporary Protected Status, on June 23, 2003.

The applicant claims on appeal that she qualifies for late registration because she had a pending asylum application during the initial registration for Nicaraguans. However, the record reveals that her asylum application was denied by the Immigration Judge on December 30, 1994, and her appeal from the denial was dismissed by the BIA on July 13, 1995. The initial registration period for Nicaraguans did not begin until January 5, 1999. The applicant's asylum application was not pending before CIS during the initial registration period for Nicaraguans. Therefore, she does not qualify for late registration on this basis.

The applicant's marriage to Mr. [REDACTED] does not qualify her for late initial registration because Mr. [REDACTED] is a United States citizen and not a TPS registrant. Further, the applicant does not qualify for late registration based on the Form I-130 petition filed on her behalf by Mr. [REDACTED]. Individuals who are awaiting 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). A relative petition is not an application for adjustment of status.

Finally, although the applicant filed her TPS application within 30 days of the dismissal of her appeal from the denial of her Form I-212 application for permission to reapply for admission, an application for permission to reapply for admission in to the United States does not meet the criteria set forth at 8 C.F.R. § 244.2(f)(2).

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 TPS will be affirmed.

It is noted that the applicant has been found inadmissible to the United States under section 212(a)(9)(A)(ii) of the Act, and has not been granted a waiver of grounds of inadmissibility.

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.