

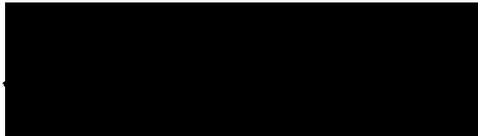
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U.S. Citizenship
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Services

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FILE: [REDACTED]
[SRC 04 219 54070]

Office: TEXAS SERVICE CENTER

Date: MAR 23 2006

IN RE: Applicant:



APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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.

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 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 for TPS because the applicant failed to establish she was eligible for late initial registration.

On appeal, counsel states the applicant is eligible for late TPS filing because she has been in the United States for the required time and that she had a Form I-485, Application to Register Permanent Residence or Adjust Status, pending during the initial registration period. Counsel acknowledges that this Form I-485 was denied in 2002, and explains that the applicant renewed her application before an Immigration Judge in 2004, which was also denied. Counsel indicates that the applicant's denial for her second application and her deportation order is still pending before the Executive Office for Immigration Review. Counsel indicates the applicant is eligible for TPS and requests that the denial of her Form I-765, Application for Employment Authorization, be reconsidered.

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.

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 Citizenship and Immigration Services (CIS), on April 29, 2004.

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, or that 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 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).

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on November 17, 2004.

The record shows that the applicant had a pending Form I-485 during the initial registration period. A pending Form I-485 application would normally cause an applicant to be eligible for late registration. However, CIS regulations also require an application for TPS as a late registrant 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, the applicant's first Form I-485 application was denied on February 13, 2002. Therefore, the applicant's 60-day period during which she must have applied to be eligible for late registration expired on April 15, 2002. The applicant filed her TPS application on April 29, 2004, more than two years later. It is noted that the second Form I-485 filed by the applicant on January 23, 2004, has no bearing on the applicant's TPS eligibility because it was not pending during the initial registration period. Further, an application for adjustment of status cannot be considered as properly filed and pending unless and until there is an underlying approved immigrant visa petition. There is no approved immigrant visa petition in this case.

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

Beyond the decision of the director, the record contains a copy of the applicant's Republic of Nicaragua passport. The passport was issued to her in Nicaragua on December 16, 1999. Therefore, she could not have been in continuous residence in the United States since December 30, 1998 until December 16, 1999, the date her passport was issued to her abroad. It is determined that the applicant has not established her continuous residence and continuous physical presence during the required time period. 8 C.F.R. § 244.2 (b) and (c). Therefore, the director's decision is affirmed for these additional reasons.

On April 2, 2004, the applicant's application for voluntary departure was granted until May 2, 2004 upon posting of a bond in the amount of \$500 and her second application for adjustment of status was denied by an Immigration Judge in Houston, Texas. The record contains no evidence that the applicant has complied with the Judge's grant of voluntary departure by timely departing the United States.

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 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.