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: CALIFORNIA SERVICE CENTER Date: MAR 27 2006

[WAC 05 048 75187]

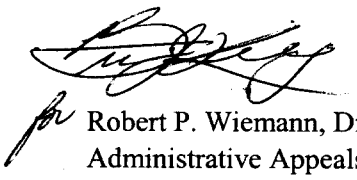
IN RE: Applicant: [redacted]

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.



for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The record reveals that on July 7, 2003, the applicant filed an earlier TPS application under Citizenship and Immigration (CIS) receipt number SRC 03 199 55256. The Texas Service Center Director denied that application due to abandonment on January 2, 2004, because the applicant failed to respond to a request for additional evidence to establish his eligibility for TPS. The applicant had been requested to submit evidence establishing his: eligibility for late initial registration; continuous residence in the United States since December 30, 1998; continuous physical presence in the United States since January 5, 1999; and, nationality and identity. Because the initial application was denied due to abandonment there was no appeal available; however, the applicant could have filed a motion to reopen within 33 days of the date of the decision. The applicant did not file a motion to reopen the previous decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on November 17, 2004, and indicated he was re-registering for TPS benefits.

The director denied this application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant states that he is appealing the denial of his TPS and employment authorization applications. He indicates on the Form I-290B, Notice of Appeal, that he will send a brief and/or additional evidence within 30 days from the date of the appeal. To date, no additional documentation has been received into the record, and the record will be considered complete. The applicant has not submitted any additional evidence in support of the appeal, with this appeal form.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant may apply for TPS during the initial registration period, or:

> (f) (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 initial registration period for Nicaraguans was from January 5, 1999 to August 20, 1999. The record reveals that the applicant filed the current application with CIS on November 17, 2004.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) 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).

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).

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). As noted above, the applicant's earliest TPS application was also filed outside of the initial registration period. Therefore, the application also must be denied for this reason.

Beyond the decision of the director, the applicant also has also failed to submit sufficient evidence to establish his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999. Therefore, the applicant has not met the requirements under 8 C.F.R. § 244.2(b) and (c) and the application must also be denied for these reasons.

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.