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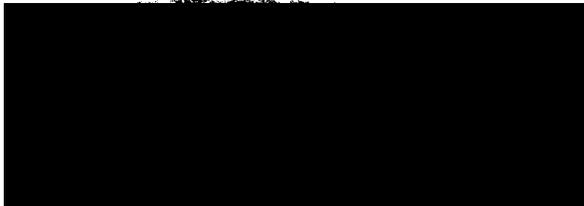


FILE: [REDACTED]
[WAC 05 096 74143]

Office: CALIFORNIA SERVICE CENTER

Date: MAR 27 2006

IN RE: Applicant:

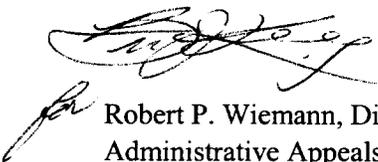


APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: 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 claims to be a 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 the applicant filed a TPS application during the initial registration period under CIS receipt number SRC 99 256 52989. The Texas Service Center Director denied that application on August 28, 2003, because the applicant failed to establish that she had not been convicted of a felony or two or more misdemeanors. The record contains evidence reflecting the following:

- 1) On October 24, 1994, the applicant was arrested by the Metro-Dade Police Department and charged with Shoplifting, a Misdemeanor, Cause [REDACTED]
- 2) On May 26, 1998, the applicant was arrested by the Metro-Dade Police Department and was charged with Grand Larceny, a Third Degree Felony, Statute/Ordinance FL812.014, Cause [REDACTED]
- 3) On March 25, 2000, the applicant was arrested pursuant to a warrant related to the previous charges listed at Numbers 1 and 2;
- 4) Regarding Cause [REDACTED] certified court disposition records indicate that the applicant plead guilty, received withholding of adjudication of guilt, and one year probation under the supervision of the Florida Department of Corrections, and that supervision was terminated on March 27, 2001.

Under the provisions of Section 101(a)(48)(A) of the Act, the applicant is considered convicted of the charges at Number 2 above for immigration purposes; although adjudication of guilt was withheld, the applicant plead guilty to the charge(s) and the judge ordered some form of punishment, penalty, or restraint on her liberty, in the form of probation. The applicant did not file an appeal from the denial decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 4, 2005, and indicated that she was re-registering for TPS.

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

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, she 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 Citizenship and Immigration Services (CIS) on January 4, 2005. Although the applicant had filed a Form I-821, Application for Temporary Protected Status, during the initial registration period, that application was denied. Any Form I-821, application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits. Since the initial application was denied on August 28, 2003, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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 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). Therefore, the application also must be denied for this reason.

Beyond the decision of the director, the record contains only a photocopy of a birth certificate, with English translation. The applicant failed to submit photo identification or a national identity document from her country of origin bearing a photograph and/or fingerprint. The birth certificate alone is insufficient to establish the applicant's identity and nationality under the provisions of 8 C.F.R. § 244.9(a)(1). Therefore, the application must also be denied for this reason.

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.