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MAY 05 2006

FILE:

[REDACTED]
[WAC 05 090 82375]

Office: CALIFORNIA SERVICE CENTER

Date:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 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 November 19, 2002, the applicant filed an earlier TPS application under Citizenship and Immigration (CIS) receipt number SRC 03 045 56998. The Texas Service Center Director denied that application on April 16, 2003, because the applicant failed to establish her eligibility for late initial registration. On May 2, 2003, the applicant filed an appeal from the denial decision. That appeal was dismissed on May 11, 2004, after the Director (now Chief) of the AAO also determined that the applicant had failed to establish her eligibility for late registration. On June 21, 2004, the applicant filed a motion to reopen [SRC 04 183 50407] the decision of the AAO Director. On motion, the applicant resubmitted evidence that had previously been entered into the record, and submitted additional evidence relating to her continuous residence and continuous physical presence in the United States. She did not, however, submit any evidence relating to her eligibility for late initial registration. The Texas Service Center Director treated this submission as an untimely appeal to the original denial of the initial TPS application, rather than as a motion to reopen the May 11, 2004, dismissal by the AAO Director. The Texas Service Center Director issued a decision on November 5, 2004, rejecting the submission as an untimely appeal, and dismissing it as a motion because the applicant had failed to submit any evidence to establish her eligibility for late initial registration, and, therefore, had not overcome the reason for denial of her case.

While the chronology noted above was in process, the applicant also had filed another TPS application on May 20, 2003, and indicated that it was an application for re-registration, or extension of employment authorization. On June 9, 2003, the Texas Service Center Director denied the application for employment authorization because the initial TPS application had previously been denied. On July 14, 2003, the applicant filed an appeal [SRC 03 201 52226] to the June 9, 2003, denial. Because no appeal is available to the denial of employment authorization, the Texas Service Center Director treated this submission as a motion to reopen the initial TPS application, and subsequently on January 24, 2004, dismissed the motion and determined that the applicant had failed to overcome the finding that she had not established her eligibility for late initial registration. On February 23, 2004, the applicant filed another motion to reopen [SRC 04 099 51181] the January 24, 2004, denial decision. Again on November 5, 2004, under separate cover from the decision discussed above, the Texas Service Center Director rejected the submission as an untimely appeal to the original decision, and dismissed it as a motion because the applicant had failed to submit any evidence to establish her eligibility for late initial registration, and, therefore, had not overcome the reason for denial of her case.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 29, 2004, and indicated this was an application for re-registration or extension of 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 she has been living in the United States since 1997, and would like to continue working here in order to support her family. In support of the appeal, the applicant submits additional evidence consisting of billing statements, invoices, receipts, and medical documents dated between 2002 and 2005.

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 CIS on December 29, 2004.

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. 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 previous TPS application also was filed outside of the initial registration period. That application was denied and the subsequent appeal and motion were dismissed for that reason. Because the applicant has not established her eligibility for late initial registration, this application also must 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.