

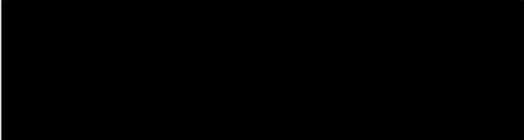
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Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

Date: MAY 30 2006

[WAC 05 090 78537]

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, 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 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 January 14, 2004, the applicant filed an earlier TPS application under Citizenship and Immigration (CIS) receipt number SRC 04 073 54168. The Texas Service Center Director denied that application on March 1, 2004, because the applicant failed to establish his eligibility for late initial registration. On March 18, 2004, the applicant filed an appeal from the denial decision. That appeal was dismissed on March 15, 2005, after the Director (now Chief) of the AAO determined that the applicant had failed to establish his eligibility for late initial registration. The Director of the AAO also determined that the applicant had failed 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. On April 11, 2005, the applicant filed a motion to reopen the decision of the AAO Director. That motion is being dismissed under separate cover.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 29, 2004, and indicated that he was re-registering for TPS.

The director denied the re-registration application on July 23, 2005, 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 has been living in the United States since 1998, and would like to continue working here in order to support his family. In support of the appeal, the applicant submits: a [REDACTED] School Certificate of Completion dated January 27, 2004; additional generic purchase and money order receipts some of which are partially illegible and some dated in 2005; a Selective Service registration dated April 26, 2004; and, money transfer receipts dated in 2004. The applicant also resubmitted some of the materials that had previously been entered into the record.

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 at the time of the denial by the California Service Center Director, the applicant had a pending motion to reopen the decision of the AAO Director; he, therefore, was eligible for continuation of temporary treatment benefits. That motion has subsequently been dismissed under separate cover, and the applicant, therefore, is not eligible for TPS benefits.

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 he 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). As noted above, the applicant's initial TPS application also was filed outside of the initial registration period. The initial application was denied and the subsequent appeal and motion were dismissed because the applicant did not establish his eligibility for late registration. Therefore, this application also must be denied for this reason.

The applicant also has failed to submit sufficient credible 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. Much of the evidence is generic and cannot be directly linked to the applicant, or does not identify a verifiable source of the information. The applicant's Nicaraguan national identity document indicates that it was issued to him in Nicaragua on "7/6/2001," and precludes a favorable finding as to his continuous residence and continuous physical presence in the United States during the requisite periods. Moreover, some of the documentation appears to have been altered. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). 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.