



U.S. Citizenship
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Services

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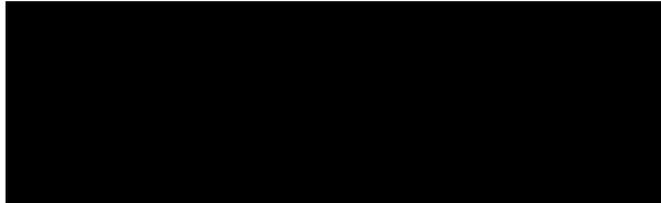
OFFICE: CALIFORNIA SERVICE CENTER

DATE: JUL 30 2007

[WAC 05 102 73621]

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.

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 on appeal. The case will be remanded to the director for further action.

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 director denied the application because the applicant had failed to respond to a request to submit evidence to establish: (1) eligibility for late registration; (2) that he had continuously resided in the United States since December 30, 1998, and had been continuously physically present from January 5, 1999, to the date of filing the application; and (3) nationality and identity.

On appeal, the applicant submits a statement and additional evidence.

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. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted with the latest extension valid until January 5, 2009, upon the applicant's re-registration during the requisite time period.

The initial registration period for Nicaraguans was from January 5, 1999 through August 20, 1999. The record shows that the applicant filed his TPS application on January 10, 2005. 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 Citizenship and Immigration Services (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).

In a Notice of Intent to Deny (NOID) dated January 4, 2006, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his nationality and identity, and evidence establishing his continuous residence in the United States since December 30, 1998, and continuous physical presence from January 5, 1999, to the date of filing the application. The applicant failed to respond; therefore, the director denied the application on April 4, 2006.

On appeal, the applicant asserts that he arrived in the United States in 1996, and that he is attaching evidence of his physical presence in the United States.

A review of the record indicates that on July 16, 1999, the applicant filed Form I-485, Application to Register Permanent Residence or Adjust Status [pursuant to section 202 of Public Law 105-100 of the Nicaraguan Adjustment and Central American Relief Act (NACARA)]. On November 23, 1999, the applicant was requested to appear for interview on December 2, 1999, regarding his I-485 application. The interview letter contains a handwritten note stating, "No Show;" however, the Form I-485 contains a notation that the applicant was "interviewed 12/2/99." The record also contains the interviewing officer's "Memorandum Record of Interview made in Examinations Section" (Form I-648), in which the [Baltimore, Maryland] office annotated that the applicant lives in Virginia and to "please schedule for interview A.S.A.P." It appears that the Form I-485 remains pending as there is no evidence in the record that the Form I-485 had been adjudicated.

The record in this case indicates that during the initial registration period, the applicant had an application for adjustment of status that was pending or subject to further review when he filed his TPS application. Accordingly, the applicant has established that he has met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2)(ii). Additionally, the record of proceeding contains the applicant's Nicaraguan birth certificate with English translation, and a copy of a passport issued to the applicant in Nicaragua on October 4, 2000, as evidence of the applicant's nationality and identity. Therefore, these findings of the director will be withdrawn.

The applicant submitted extensive evidence to establish his continuous residence and continuous physical presence in the United States during the requisite periods. It is noted, however, that the applicant submitted a copy of a State of Virginia Driver's License under the name of [REDACTED], and that some of the evidence furnished to establish residence and physical presence also are under the name of [REDACTED]. It is not clear in the record whether [REDACTED] and [REDACTED] are one and the same person. Additionally, as noted above, the applicant's passport was issued in Nicaragua on October 4, 2000.

Therefore, the case will be remanded to the director for further adjudication of the application, and to accord the applicant an opportunity to submit additional evidence addressing the above.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.