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U.S. Citizenship
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FILE:

[WAC 05 075 71648]

Office: California Service Center

Date:

NOV 06 2007

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 California Service Center. 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 (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 the applicant filed a late initial TPS application on June 27, 2002, under CIS receipt number SRC 02 213 55292. The director initially denied the application on January 8, 2003, because the applicant failed to respond to a notice of intent to deny to submit evidence to establish his eligibility for late initial registration for TPS, his continuous residence in the United States since December 30, 1998, and evidence of his identity. The director, therefore, considered that application abandoned. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The record reflects that the applicant timely filed a motion to reopen on January 27, 2003. The director denied the motion to reopen on February 20, 2003, as the applicant failed to submit evidence to establish his eligibility for TPS. The director, however, granted the applicant appeal rights. The applicant filed a subsequent late motion to reopen on August 8, 2003. The director denied the motion to reopen because, as noted by the director, the applicant again failed to submit evidence to establish his eligibility for TPS.

A subsequent appeal was dismissed by the Chief, AAO, in a decision issued simultaneously with this decision. In dismissing the appeal, the Chief, AAO, noted that although the applicant was eligible to file a late initial TPS application as the child of a TPS registrant, the applicant had failed to establish the requisite continuous residence and continuous physical presence in the United States.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 14, 2004, under CIS receipt number WAC 05 075 71648, and indicated that he was re-registering for TPS. The Director, California Service Center, denied this application on July 23, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to re-register for TPS.

On appeal, the applicant states he is eligible to file a late TPS application as the minor child of a TPS registrant, and that he has been living in the United States since 1998. With his appeal, in an attempt to establish his continuous residence and his continuous physical presence, the applicant submits school transcripts and related documents.

However, 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.

Beyond the decision of the director, the applicant failed to submit sufficient evidence to establish his continuous residence in the United States since December 30, 1998, and his continuous physical presence since January 5, 1999 to June 27, 2002, the date of filing. It is noted that although the applicant states in his TPS application, and on his Application for Employment Authorization, Form I-765, that he entered the United States in March 1998, a review of his father's file (A76 315 369) reveals that his father indicated on his initial TPS application, filed on

May 2, 1999, that the applicant was residing in Nicaragua; however, on subsequent TPS applications filed on July 22, 2001, on August 3, 2001, and on December 14, 2004, his father indicated that the applicant was residing in the United States. It is also noted that the applicant submitted school transcripts for the years beginning from school year 2000/01, through school year 2004/05; however, the applicant did not provide any records prior to the year 2000. In that the applicant claims that he has been in the United States since January 1, 1998, it is reasonable to expect that the applicant would have, reliable documentation, such as school records and medical records, to establish his continuous residence and continuous physical presence in the United States prior to 2000. The applicant has, therefore, failed to establish the continuous residence and continuous physical presence in the United States requirements during the requisite period. Consequently, for these additional reasons, the director's decision to deny TPS must be affirmed.

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.