



U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE:

OCT 02 2007

[WAC 05 103 81440]

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.

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 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 establish that she was eligible for late registration.

On appeal, counsel submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under § 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
 - (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 condition described in paragraph (f)(2) of this section.

The term *continuously resided*, as defined in 8 C.F.R. § 244.1 means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of brief, casual, and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The term *continuously physically present*, as defined in 8 C.F.R. § 244.1 means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

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 indicates that the applicant filed her TPS application on January 4, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period from January 5, 1999 through August 20, 1999, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed 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. See 8 C.F.R. § 244.2(g).

In a Notice of Intent to Deny (NOID) dated December 11, 2006, the applicant was requested to submit evidence to establish that she qualified for late registration as described in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence to establish nationality and identity, and evidence to establish 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 director noted that the evidence furnished in response to the NOID was insufficient to establish eligibility for late registration. She maintained that a change of status application (Form I-485) was denied on October 6, 2004, and the TPS application was filed on January 13, 2005, over 60 days from the expiration or termination of the qualifying condition. 8 C.F.R. § 244.2(g). The director, therefore, denied the application on January 22, 2007.¹

On appeal, counsel asserts that the director erred in calculating the 60 days relating to TPS late registration. He states that the Form I-485 was ultimately denied on November 10, 2004, and the TPS application was filed on January 4, 2005. He submits evidence to establish his assertion.

¹ It is noted that the director's denial decision was dated January 22, 2007, and the applicant's appeal was filed on March 1, 2007; however, the record indicates, and as stated by counsel on appeal, that the director's denial decision was remailed to the applicant and her attorney on February 6, 2007, based on a previous receipt of the applicant's change of address. Therefore, the appeal was timely filed.

A review of the record of proceeding indicates that on March 31, 2000, the applicant filed Form I-485, adjustment of status to that of a lawful permanent resident pursuant to section 202 of Public Law 105-100 of the Nicaraguan Adjustment and Central American Relief Act (NACARA). On October 6, 2004, the adjustment application was denied by the District Director, Los Angeles, California. Based on a motion to reopen filed by the applicant, the case was reopened by the district director. After a thorough review of the evidence furnished on motion, the district director determined that the applicant had failed to overcome the grounds of denial and upheld her decision on November 10, 2004.

The record indicates, and as maintained by counsel, that the applicant's NACARA adjustment application was ultimately denied on November 10, 2004, and that the applicant filed her TPS application on January 4, 2005, within the 60-day period immediately following the denial of her adjustment application, and as provided in 8 C.F.R. § 244.2(g). Accordingly, the applicant has established that she has met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2)(ii). Therefore, this finding of the director will be withdrawn.

However, the evidence contained in the record of proceeding is insufficient to establish the applicant's qualifying continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999, as described in 8 C.F.R. § 244.2(b) and (c). It is noted that the applicant's Nicaraguan passport was issued in Nicaragua on June 26, 2001.

Accordingly, the case will be remanded to the director for further adjudication of the application. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

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.