



U.S. Citizenship  
and Immigration  
Services

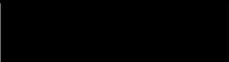
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Office: VERMONT SERVICE CENTER

Date: JAN 30 2008

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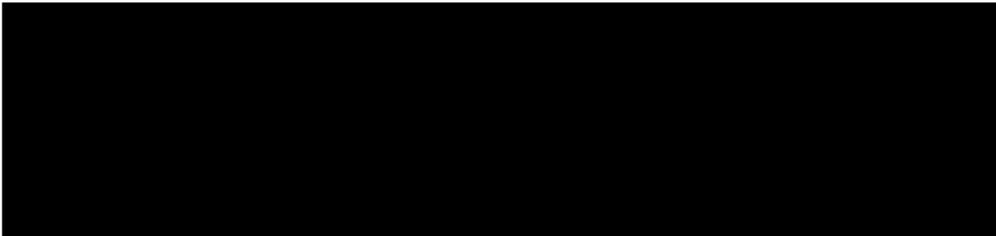
Applicant:



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, Vermont Service Center, and is now before the Administrative Appeals Office 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 director determined that the applicant failed to establish that she was eligible for filing her TPS application after the initial registration period from January 5, 1999 to August 20, 1999. The director also determined that the applicant was ineligible for TPS because it appeared that she had firmly resettled in another country. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant was not firmly resettled in another country prior to arriving in the United States.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state as 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 section 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 conditions described in paragraph (f)(2) of this section.

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.

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 a 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 initial registration period for Nicaraguans was from January 5, 1999 to August 20, 1999. The record shows that the applicant filed this application on June 12, 2006.

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).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding confirms that the applicant filed her application after the initial registration period had closed. 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 the late initial registration. 8 C.F.R. § 244.2(g).

On December 13, 2006, the applicant was provided the opportunity to submit evidence establishing her 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 her continuous residence in the United States since December 30, 1998 and her continuous physical presence in the United States from January 5, 1999 to the date of filing the application. The applicant, in response, provided evidence in an attempt to establish continuous residence and continuous physical presence during the qualifying period. She did not present evidence of her eligibility for late registration. In addition, the applicant stated that she had resided in Mexico for several years prior to entering the United States. Therefore, the director denied the application.

On appeal, counsel for the applicant states that the applicant did not firmly resettle in another country prior to arriving in the United States. The applicant has not submitted any evidence to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). It is noted that the record indicates that on

August 11, 2006, an Immigration Judge issued an order that the applicant's removal proceedings case be administratively closed. According to the order, the applicant was eligible for TPS for Nicaraguans. The record also contains a copy of an interview notice dated November 25, 1997, instructing the applicant to appear for an interview on December 17, 1997. On December 6, 1997, an interview Cancellation Notice informing the applicant that her interview was cancelled. Consequently, the applicant had 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. Consequently, the director's conclusion that the applicant failed to establish her eligibility for late registration will be withdrawn.

The second issue in this proceeding is whether the applicant had firmly resettled in another country prior to entering the United States.

As stated above, the applicant was requested on December 13, 2006, to submit evidence establishing her eligibility for late initial registration for TPS and evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant provided evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period. The applicant also indicated that she had lived in Mexico for several years prior to arriving in the United States. The director determined that the applicant is ineligible for TPS because she had firmly resettled in another country prior to arriving in the United States.

On appeal, counsel for the applicant states that the applicant was not made an offer or, received, residency or other legal permanent status in another country. According to counsel, the applicant entered Mexico illegally and resided in Mexico illegally for the entire time she was there. Counsel also states that the applicant applied for Mexican residency in 1984 but was denied. However, neither the applicant, not counsel has provided any evidence to support this claim that she applied for and was denied Mexican residency. However, the record establishes that the applicant resided in Mexico for 10 years, met and married a Mexican citizen, and had two Mexican-born children there prior to arriving in the United States. The evidence establishes that the applicant had firmly resettled, and made a life for herself, in Mexico prior to arriving in the United States.

An alien shall not be eligible for temporary protected status if the Attorney General finds that the alien was firmly resettled in another country prior to arriving in the United States. Sections 244(c)(2)(B)(ii) and 208(b)(2)(A)(vi) of the Immigration and Nationality Act (the Act).

As defined in 8 C.F.R. § 208.15, an alien is considered to be firmly resettled if, prior to arrival in the United States, he or she entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement unless he or she establishes:

- (a) That his or her entry into that country was a necessary consequence of his or her flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that country; or
- (b) That the conditions of his or her residence in that country were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled. In making his or her determination, the asylum officer or immigration judge shall consider the conditions under which other residents of the country live; the

type of housing, whether permanent or temporary, made available to the refugee; the types and extent of employment available to the refugee; and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation that includes a right of entry or reentry, education, public relief, or naturalization, ordinarily available to others resident in the country.

The applicant acknowledges that she married a Mexican citizen. While the applicant also indicates that this marriage ended in divorce the applicant and counsel failed to provide any documentary evidence to support the claim that the applicant had not obtained lasting resident or citizenship status as a result of her marriage, or her 10-year stay in Mexico. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

The burden of proof is upon the applicant to establish that she meets the above requirements. Counsel's statement and the evidence provided on appeal do not overcome the adverse evidence in the record. Consequently, the Director's decision to deny the application for temporary protected status will be affirmed.

Beyond the director's decision, it is noted that a Federal Bureau of Investigation fingerprint results report indicates:

1. The Los Angeles, California, Police Department arrested the applicant on February 24, 1990 for "Grand Theft Property."
2. The Sparks, Nevada Police Department arrested the applicant on February 28, 1992 for "Burglary."
3. The United States Border Patrol, Laredo, Texas, arrested the applicant on August 25, 2005 for "Conspiracy/Aiding or Abetting."

The final dispositions for these arrests are not included in the record, nor were the final court dispositions requested. It is also noted that the applicant has failed to declare on her applications that she has ever been arrested. CIS must address these arrests in any future proceedings.

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.