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U.S. Citizenship
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Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: **NOV 28 2008**

[WAC 08 211 50357, *appeal*]
[WAC 08 034 50233]

IN RE:

Applicant: [REDACTED]

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting 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 applying for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The applicant filed a Form I-821, Application for Temporary Protected Status, on January 4, 2005 under receipt number WAC 05 096 73709, and indicated that he was re-registering for TPS. The director categorized the application as a new initial registration, instead of a re-registration application and denied that application on August 15, 2006, because the applicant failed to establish he was eligible for late initial registration for TPS. The applicant filed an appeal. The Chief, AAO, determined that because the record did not reflect a decision on an initial application filed on July 3, 2000, the director's denial of the application was withdrawn and the matter was remanded to afford the applicant an opportunity to establish his eligibility for TPS.

On remand, the CSC Director determined that the late initial application that the applicant submitted in 2000 did not exist in the record. In fairness to the applicant, she entered an application for the applicant under receipt number WAC 08 034 50233 with a filing date of July 3, 2000. The director denied that application on June 10, 2008, after determining that the applicant had failed to establish he was eligible for late initial registration and because he had been convicted of two misdemeanors in the United States.

On appeal, the applicant provides evidence and successfully argues that his late appeal should be considered timely filed. The record shows that the director's decision was late in reaching the applicant because it was misaddressed. The applicant argues that he is eligible for late initial registration because he is a national of Nicaragua who had been granted voluntary departure status, and that he has continuously resided in the United States since December 30, 1998 and he has been continuously physically present in this country since January 5, 1999. The applicant states that the director's decision was in error because his convictions relate to traffic violations which are not criminal offenses.

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 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.

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. The initial registration period for Nicaraguans was from January 5, 1999, through August 20, 1999. The record shows that the applicant filed his application with Citizenship and Immigration Services (CIS), on July 3, 2000.

To qualify for late registration, an applicant must provide evidence that during the initial registration period, he or she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

On May 1, 2008, 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). In response to the director's request, the applicant provided no further documentation concerning late registration eligibility. The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on June 10, 2008.

On appeal, the applicant submits evidence in an attempt to establish his qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Application for Temporary Protected Status within the initial registration period. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS is affirmed for this reason.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1(3) define “felony” and “misdemeanor” as:

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.

The record reflects the following offenses:

- (1) On May 9, 2002, the applicant was convicted of driving under the influence of alcohol or drugs, a violation of Florida Statute 316.193, by a Judge in the County Court for Dade County, Florida, a misdemeanor. (Case Number [REDACTED])
- (2) On July 2, 2002, the applicant was convicted of driving under the influence of alcohol or drugs, a violation of Florida Statute 316.193, by a Judge in the County Court for Dade County, Florida, a misdemeanor. (Case Number [REDACTED])

On appeal, the applicant states that the director’s decision was in error because his convictions relate to traffic violations which are not criminal offenses. However, this statement does not mitigate the convictions outlined above.

The applicant is ineligible for TPS due to his record of two misdemeanor convictions detailed above. Section 244(c)(1)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director’s decision to deny the application for this reason is affirmed.

It is noted that on June 24, 1997, the applicant was granted the opportunity to voluntarily leave the United States by August 25, 1997 by an Immigration Judge in Miami, Florida. The Judge’s order further stated that if he failed to depart, the privilege of voluntary departure was withdrawn and the applicant was ordered

deported from the United States to Nicaragua. The record does not show that he departed this country as ordered. It is further noted that the record contains an outstanding Form I-205, Warrant of Removal/Deportation, issued by the District Director of the Miami, Florida, office of Citizenship and Immigration Services, (formerly the Immigration and Naturalization Service) on September 19, 1997.

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.