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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

MAR 11 2004

FILE: [redacted] Office: Vermont Service Center Date:

IN RE: Applicant: [redacted]

PETITION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. §1254

ON BEHALF OF PETITIONER: [redacted]

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.

Cindy M. Gomez for
Robert P. Wiemann, Director
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 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 she met the qualification for late initial registration, as she filed her TPS application after the initial registration period from January 5, 1999 to August 20, 1999. The applicant filed her first application on July 10, 2001.

On appeal, counsel asserts that the applicant is prima facie eligible for TPS because her current visa status is one of the exceptions allowing a late filing. Counsel also resubmitted documentation previously provided to CIS.

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 [now the Secretary Department of Homeland Security (Secretary)]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 used 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 used 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.

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, (now the Secretary), 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, 2005, upon the applicant's re-registration during the requisite period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he or she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

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 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).

On October 21, 2002, 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 date of entry, her residence in the United States since December 30, 1998, and her physical presence in the United States from January 5, 1999. The applicant, in response, provided evidence of her residence and physical presence in the United States. The applicant also submitted a photocopy of her passport pages containing a B1/B2 visa issued on October 19, 1998, and an admission stamp indicating that she was admitted into the United States on November 17, 1998, at Houston, Texas. The director found that the applicant had not established eligibility for late registration and denied the application.

On appeal, counsel admits that the applicant filed her application for TPS after the initial registration period, on July 10, 2001. According to counsel, the applicant received an employment authorization card on or about January 15, 2002 and was issued a second card on July 6, 2002. Counsel points out that the United States government issued the applicant's B1/B2 visa on October 19, 1998 and she was admitted into the United States on November 7, 1998. Counsel argues that the applicant's visa does not expire until October 18, 2008, and that consequently, the applicant was a nonimmigrant at the time of the initial registration period and has for that reason met the criteria described in 8 C.F.R. § 244.2(f) (2)(i).

Eligibility under 8 C.F.R. § 244.2(F)(2)(i) states that the applicant must demonstrate that she was in valid non-immigrant status during the initial registration period. The applicant was admitted to the United States on November 7, 1998. Given the usual six-month period of admission, the applicant's non-immigrant status would have expired on May 6, 1999. It is noted that the applicant has not submitted evidence of the period of her admission.

However, under 8 C.F.R. § 244.2(g), the applicant must, within 60 days of the termination of the conditions in (f)(2), file an application for TPS. Although the applicant's period of non-immigrant stay expired in 1999, the applicant did not file for TPS until 2001.

Counsel's argument that the non-immigrant visa's validity date would qualify the applicant is not accurate. The non-immigrant visa is merely evidence that the applicant may apply for admission into the United States as a non-immigrant. Further, the date that the applicant's permission to remain in the United States expired, and/or the date she began employment in the United States, is the date that she became an intending immigrant, and thus, no longer considered a non-immigrant.

There is no other provision for eligibility under TPS that would support counsel's arguments.

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). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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.