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**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: Texas Service Center

Date:

JUL 05 2007

[SRC 03 208 52226]

IN RE:

Applicant:



APPLICATION:

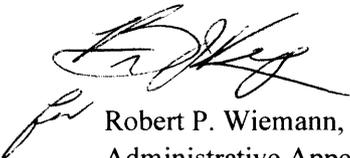
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the California Service Center office. 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, Texas 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 July 15, 2003, under CIS receipt number SRC 03 208 52226. The director denied the application on January 21, 2004, because the applicant failed to submit sufficient evidence to establish eligibility for late initial registration for TPS.

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.

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 period.

The initial registration period for Nicaragua was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed this TPS application with CIS, on July 15, 2003.

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/child of an alien currently eligible to be a TPS registrant, and he/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 December 6, 2003, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, in response, provided a copy of the decision on her application for status as a permanent resident.

On appeal, counsel alleges that a copy of the request for evidence was only sent to the applicant and not to counsel whose office was closed for the holidays and that the "BCIS Service Center denies the application for T.P.S. for client because they received the evidences on 1/14/04 instead of 1/7/04." Counsel further asserts that had a copy of the request been sent to her, arrangements could have been made to have the applicant submit the evidence in a timely fashion.

Counsel's assertions are not persuasive. The director denied the application because the applicant failed to establish her eligibility for late initial registration, not because the evidence was submitted late.

The record contains a copy of a Decision On Application For Status As Permanent Resident, dated May 1, 2000, stating that the application was denied because the applicant's mother's application was denied under Section 202 of NACARA. The record also contains two additional Decisions On Application(s) For Status As Permanent Resident dated January 9, 2002, and January 29, 2002, stating that the application was denied because the applicant reached her 21st birthday on October 12, 2000, and that she entered the United States on September 6, 1997, and had not been physically present in the United States since December 1, 1995.

However, as discussed above, under the provisions of 8 C.F.R. § 244.2(g), 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. In this case, the applicant did not apply for TPS within 60 days of the date of the decision On Application For Status

As Permanent Resident which was issued on January 29, 2002. The applicant had until March 28, 2002, to file her TPS application. Her TPS application was not filed until July 15, 2003, more than one year later. The applicant, therefore, has not established that she has met the criteria for late initial registration described in 8 C.F.R. § 244.2(f)(2) and (g). Consequently, the director's decision to deny the application for temporary status will be affirmed.

Beyond the decision of the director, the applicant has failed to submit sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The application must also be denied for these reasons.

It is noted for the record that the applicant was ordered removed from the United States on September 13, 2002, because her application for adjustment of status under section 202-NACARA had been denied.

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 TPS 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.