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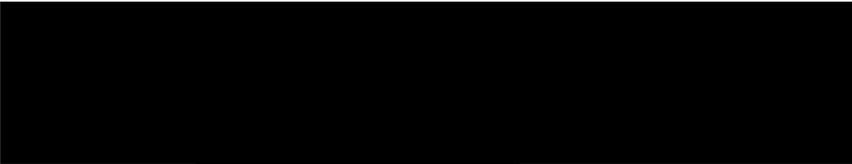
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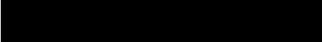
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

FEB 20 2008

[WAC 05 084 80305]

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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 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 first Form I-821, Application for Temporary Protected Status, with the Texas Service Center (TSC) on July 1, 2002, after the initial registration period for Nicaraguans had ended (SRC 02 223 54757 relates). On December 2, 2002, that application was denied because the applicant failed to establish her eligibility for late registration. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed the current Form I-821 on December 23, 2004, and indicated that she was re-registering for TPS or renewing her temporary treatment benefits. The director of the CSC denied the application on July 23, 2005, because the applicant's prior TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS or renewal. The applicant filed her appeal from that decision on August 18, 2005.

If the applicant is filing an application for re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17. If the applicant is applying to renew her temporary treatment benefits, she must have a pending TPS application.

In this case, the applicant has not previously been granted TPS and she no longer has a pending application. Therefore, she is not eligible to re-register for TPS or to renew her temporary treatment benefits. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file an application for late initial registration for TPS instead of an application for annual re-registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant may apply for TPS during the initial registration period, or:

- (f) (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 phrase 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 phrase 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 phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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. As previously discussed, the applicant filed the current application with Citizenship and Immigration Services (CIS) on December 23, 2004.

To qualify for late registration, the 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.

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 appeal, the applicant asserts that she is eligible for late registration because she entered the United States as a nonimmigrant visitor (B-1/B-2) on November 26, 1998, and that her authorization to remain in the United States for United States expired during the initial registration period. In support of the appeal, the applicant submits photocopies of pages from her Nicaraguan passport. She also submits documentation relating to her physical presence in the United States on various dates from 1998 to 2001.

Based on a review of the entry and exit stamps contained in the passport pages provided, the applicant was admitted to the United States as a non-immigrant visitor on approximately nine occasions from February 1993 to March 1996. She then visited the United States from November 26, 1998, to December 23, 1998. Her last entry into the United States was as a visitor on February 28, 1999.

While the applicant's non-immigrant status technically rendered her eligible for late registration, CIS regulations also require that an application for late registration be filed within a 60-day period immediately following the expiration or termination of conditions that made the applicant eligible for late registration. 8 C.F.R. § 244.2(g). Assuming that the applicant was last authorized to remain in the United States for six months (the maximum time-period allowed upon entry as a non-immigrant visitor), her valid non-immigrant status would have expired on August 27, 1999. Therefore, her 60-day period for late registration actually expired on October 27, 1999. The applicant did not file her application for late registration until more than one year and eight months later on July 1, 2002.

The applicant has failed to establish that this application should be accepted as an application for late registration under any of the provisions of 8 C.F.R. § 244.2(f)(2). Furthermore, the applicant has not submitted sufficient evidence to establish that she satisfies the continuous residence and continuous physical presence requirements under the provisions of 8 C.F.R. §§ 244.2(b) and (c). Therefore, the application must also be denied for these reasons.

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.