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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[SRC 02 231 55091]

Office: TEXAS SERVICE CENTER Date: MAY 09 2005

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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
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 director denied the application because the applicant failed to establish that she was eligible for late registration.

On appeal, the applicant submits a statement and resubmits evidence that had previously been entered into the record.

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.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until July 5, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for Nicaraguans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed her initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on July 5, 2002.

The burden of proof is upon the applicant to establish that 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

To qualify for late registration, the applicant must provide evidence that during the initial registration period 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 late initial registration. 8 C.F.R. § 244.2(g).

On December 11, 2002, 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 was also requested to provide evidence establishing her continuous residence and her continuous physical presence during the requisite periods. The applicant, in response, provided photocopies of the following documentation:

1. Her statement dated January 11, 2003, in which she states that she “mailed on time (July 5, 2002)” the TPS and employment authorization applications;
2. Her Florida Learner License issued on September 6, 2001;
3. Her Florida Identification Card issued on January 2, 2001;
4. Her Nicaraguan birth certificate, with English translation;
5. Her Nicaraguan national identity document, valid from “11-06-1997” through “11-06-2007;”
6. An affidavit from her mother, attesting that the applicant has been living with her in Florida since January 1999;
7. An AT&T Wireless billing statement in the name of her mother, dated December 8, 2002;
8. A Florida Power and Light billing statement in the name of her mother, dated January 2, 2003; and,
9. An affidavit dated January 6, 2003, from [REDACTED] attesting to her friendship with the applicant that was established in February 1999, in Miami, Florida.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on January 23, 2003. It is noted that the decision letter contains a typographical error in the date of the letter, listing it as “2002” rather than the correct year.

On appeal, the applicant states that she did respond to the December 11, 2002, Notice of Intent to Deny and that all the supporting documentation was mailed prior to January 16, 2003. She submits copies of the mailing receipts for her earlier response. In support of the appeal, the applicant resubmits additional copies of the documents listed at Numbers 1, 5, 6, 7, 8, and 9, above.

The applicant submitted evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file her Form I-821, Application for Temporary Protected Status, within the initial registration period. The applicant asserts that she mailed her applications “on time.” It appears that the applicant may be referring to the time period for re-registration applications, for persons who had previously submitted a TPS application during the initial registration period. The applicant also states that she applied for TPS “from the first time.” The applicant, however, has not submitted any evidence of having filed a TPS application at any time between January 5, 1999, through August 20, 1999, during the initial registration period for Nicaraguans.

The applicant noted on her Form I-821, that she arrived in the United States as a “Visitor” in “1998.” In her statement of January 11, 2003, the applicant states she entered the United States on or about April 7, 1998, through Miami, Florida. The applicant, however, did not provide: photocopies of her complete passport; visa pages; Form I-94, Arrival and Departure Record; Form I-539, Application to Extend/Change Nonimmigrant Status; Form I-20, Certificate of Eligibility for Nonimmigrant Student Status; or other evidence of having been in lawful status at the time of the initial registration period, and/or of filing within 60 days of the

termination or change of that condition. 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.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish her continuous residence in the United States since December 30, 1998, and her continuous physical presence since January 5, 1999. Therefore, the applicant has not established that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c), and the application must also be denied for these reasons.

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.