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

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FILE:



[WAC 05 210 83583]

Office: California Service Center

Date:

**DEC 29 2006**

IN RE:

Applicant:



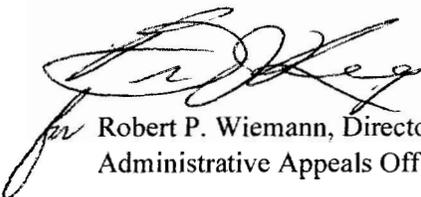
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
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 record reveals that the applicant filed a late initial TPS application on November 15, 2000, under CIS receipt number LIN 01 046 50480. The director denied that application on June 28, 2001, because the applicant failed to establish that she was eligible for late initial registration for TPS. The record does not reflect an appeal of that decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 28, 2005, and indicated that she was filing an initial application for TPS. The director categorized the application as a re-registration application and denied that application on May 1, 2006, because the applicant's initial TPS application had been denied as the applicant did not establish prima facie eligibility for TPS.

On appeal, counsel asserts that the applicant timely submitted her initial TPS application, and she meets the eligibility requirements for TPS. Counsel states that the applicant submitted her initial TPS application in July 1999, however, CIS returned that application with a note instructing the applicant to complete the Form I-765, Item # 16 (eligibility status); that the applicant timely submitted a second application on August 16, 1999, before the August 20, 1999 deadline. In an attempt to establish the applicant's continuous residence since December 30, 1998 and her continuous physical presence since January 5, 1999, counsel submits: copies of paychecks given to the applicant by a Hispanic Auto Body Shop from October 1998 to December 1998; copy of a Minnesota identification card issued with a September 24, 2003 expiration date; Western Union money transfer receipts dated April, August, September, and October 1999; pay stubs from June 1999 through March 2000 from Ellison Meat Company; a natural gas bill dated March 14, 2002; Hospital birth registration of the applicant's son, born February 13, 2002 in Worthington, Minnesota a letter from the applicant signed in June 2003, authorizing her family to take her son to Nicaragua; Hospital birth registration of the applicant's daughter, born July 1, 2004, in Russellville, Arkansas; and Western Union money transfer receipts issued on October 15, 2004, and on February 21, 2005.

In an attempt to establish that the applicant timely filed her initial application for TPS, counsel submits: money order receipts for \$50.00 and \$25.00, both dated July 15, 1999, which counsel states are for the filing fees for the I-821 (\$50), and for the I-765 (\$25); a letter from the Nebraska Service Center, dated July 16, 1999, returning the Application for Employment Authorization, with instructions to complete Item # 16, on the application; an I-765 Application for Employment Authorization stamped received by the Nebraska Service Center on August 16, 1999, and showing that the application was transferred to Bloomington, Minnesota, for processing; an online status check for I-765 showing it was sent to St. Paul, Minnesota; a returned remittance Notice from the Nebraska Service Center, dated September 8, 1999, returning an extra \$75 remitted by the applicant, with a note instructing that \$100 is the correct fee; a letter from the applicant, dated January 13, 2000, inquiring about the status of her case; a receipt notice for Form I-821 and Form I-765 filed on November 15, 2000; copy of Form I-821 submitted by the applicant on January 4, 2004; a copy of a money order receipt submitted with another I-821 sent in February 2005; and a CIS appointment notice scheduling the applicant for fingerprinting on February 13, 2006.

It is noted that none of the documents submitted establishes the applicant's eligibility for late initial registration. Counsel's assertion that the evidence submitted establishes that the applicant timely filed an initial TPS application is not persuasive. At the onset, it is noted that there is no evidence in the record that the applicant filed a TPS application before August 20, 1999 deadline. While the evidence submitted by counsel on appeal indicates that the applicant submitted an Application for Employment Authorization, Form I-765, on or about August 16, 1999, there is no reliable supporting documentation to establish that the applicant submitted a TPS application before the filing deadline. It also noted that the record contains a handwritten note from the applicant referencing a pending Form I-130 petition filled by her sister, and a Form I-485 submitted by the applicant on March 31, 2001, in response to the director's request for evidence issued on March 21, 2001. Although there is the evidence that an Application for Employment Authorization, Form I-765, was submitted on August 16, 1999, there is no supporting evidence that a TPS application was filed prior to the August 20, 1999 filing deadline.

If the applicant is filing an application as a 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.

In this case, the applicant has not previously been granted TPS. Therefore, she is not eligible to re-register for TPS. 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 a late initial application for TPS instead of an 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 parole; 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. 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 July 5, 2007, upon the applicant's re-registration during the requisite period. The record reveals that the applicant filed her initial application with Citizenship and Immigration Services (CIS) on April 28, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period 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 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).

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for this reason.

Beyond the decision of the director, it is noted that although the applicant states in response to the director's March 21, 2001 request for evidence, that she is the beneficiary of a pending Form I-130 petition filled on her behalf by her sister under section 203(a)(2)(A) of the Act, and a Form I-485, the record does not indicate a pending I-130 petition, or a I-485 Application for Adjustment of Status. Furthermore, individuals who are awaiting approval or preference allocation for an immigrant visa under section 203 of the Act are not eligible for late registration under 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for this reason.

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.