



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: MAY 03 2006

[WAC 05 057 75233]

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.

Robert P. Wiemann, Chief  
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 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 applicant filed her initial TPS application with Citizenship and Immigration Services (CIS) on July 7, 2003, under CIS receipt number SRC 03 199 54395. The Director of the Texas Service Center denied that application on March 10, 2004, because the applicant failed to establish her eligibility for late initial registration. On April 15, 2004, the applicant failed an appeal from the denial decision. The service center director dismissed the appeal as untimely filed on May 6, 2004.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on November 26, 2004.

The director denied the application on April 21, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration or renewal of her temporary treatment benefits.

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. If an applicant is applying for renewal of temporary treatment benefits, he or she must have a pending TPS application.

In this case, the applicant has not previously been granted TPS. Therefore, she is not eligible to re-register for TPS or to renew temporary treatment benefits. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the applicant indicated on the form I-821 that she was applying for late initial registration, not for re-registration or renewal of her temporary treatment benefits. Therefore, the current application will be considered as a late initial 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) (1) Registers for Temporary Protected Status 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 initial registration period for Nicaraguans was from January 5, 1999 through August 20, 1999. The record reveals that the applicant filed the current TPS application with CIS on November 26, 2004.

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 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).

CIS computer records reveal that the applicant was admitted to the United States at Miami, Florida, on September 16, 1999, as a nonimmigrant B-2 visitor, and was authorized to remain in the United States until July 17, 1999. The record further reveals that the applicant departed the United States on July 16, 1999. The applicant was subsequently admitted to the United States at Miami, Florida, on September 17, 1999, as a nonimmigrant B-2 visitor with stay authorized to March 15, 2000. There is no indication in the record that the applicant has departed the United States since that date.

In order to qualify for late initial registration, the applicant was required to file her initial Form I-821 with 60 days of the date her nonimmigrant stay expired, in this case, March 15, 2000. The applicant did not file her initial Form I-821 until July 7, 2003, more than three years after the expiration of her nonimmigrant status. Therefore, she cannot qualify for late initial registration on this basis.

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.

It is noted that the record reveals that the applicant was arrested on April 29, 2005, and charged with aggravated battery – battery aggravated with a deadly weapon in violation of FL 784.045 (1A2). This offense must be addressed in any further proceeding before CIS.

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.