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**U.S. Citizenship
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MAY 03 2006

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER
[WAC 05 092 78552]

Date:

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.

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

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 (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 on August 3, 2001, the applicant filed an earlier TPS application under Citizenship and Immigration (CIS) receipt number SRC 01 251 56371. The Texas Service Center Director denied that application due to abandonment on March 24, 2003, because the applicant failed to respond to a request for additional evidence. On January 10, 2003, the applicant had been requested to submit: photo identification, or a national identity document from her country of origin bearing a photograph and/or fingerprint; and, evidence to establish her eligibility for late initial registration. The record does not contain a response from the applicant. Because the initial application was denied due to abandonment there was no appeal available; however, the applicant could have filed a motion to reopen within 33 days of the date of the decision. The applicant did not file a motion to reopen the previous decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 31, 2004, and indicated that she was re-registering for TPS.

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant states that she believes she qualifies for TPS and for late initial registration, because at the time of the initial registration period, she was a minor and her mother was and remains an alien currently eligible to be a TPS registrant. In support of the appeal, the applicant submits another copy of her Nicaraguan birth certificate, indicating [REDACTED] as her mother. She also submits additional evidence consisting of: her State of Florida Learner License issued on February 6, 2003; the Employment Authorization documents (EAD) for [REDACTED] under Category C19 for the period of September 17, 1999, through July 5, 2000, and under Category A12 for the successive periods through July 5, 2006; the CIS receipt notices for [REDACTED] August 19, 1999, TPS and EAD applications, and her own August 3, 2001 applications; additional copies of previous applications and correspondence; additional copies of money transfer receipts dated in 1998 through 2002; and, the State of Florida Birth Certificate for a child born to her on November 20, 2002.

The record reflects that the both the notice of intent to deny and the denial decision on the applicant's initial TPS application were mailed to an incorrect address. Both letters were mailed to the applicant's address as provided on her initial TPS application; however, on May 20, 2002, the applicant had provided a new address. Therefore, the denial due to abandonment was made in error.

However, the application may not be approved.

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. 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 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 August 3, 2001, and the current Form I-821, was filed on December 31, 2004.

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).

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).

The evidence of record reflects that during a portion of the initial registration period the applicant was an unmarried minor, and therefore, qualified for late initial registration under the provisions of 8 C.F.R. § 244.2(f)(2)(iv). Because her status as a "child" for immigration purposes terminated on July 30, 1999, the

applicant had 60 days from that date in order to file her TPS application under the provisions of 8 C.F.R. § 244.2(g). The applicant, however, did not submit her initial TPS application until August 3, 2001, well beyond the 60-day period. Therefore, the applicant has not established that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2) and (g), and the application may not be approved for this reason.

In addition, the applicant also has failed to submit sufficient credible evidence to establish her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999. Some of the submitted documentation appears to have been altered. For example, the money transfer receipts bear the printer's edition marked "© 2000" while these receipts have been hand-dated in 1998 and 1999. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Therefore, the applicant has not met the requirements under 8 C.F.R. § 244.2(b) and (c) and 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.