

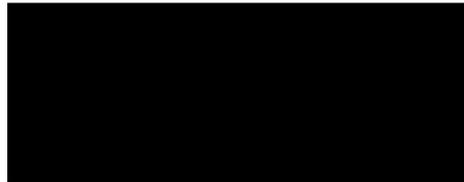
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]  
[EAC 03 087 51220]

OFFICE: Vermont Service Center

DATE:

JUL 27 2007

IN RE:

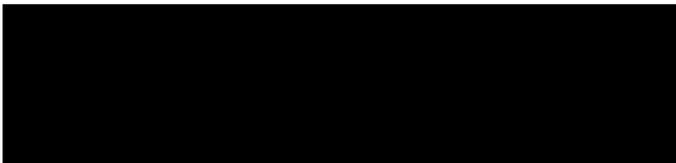
Applicant:



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.

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, Vermont Service Center. It is now on appeal before the Administrative Appeals Office (AAO). 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 on the ground that the TPS application was not timely filed and the applicant failed to establish that he was eligible for late registration.

On appeal the applicant asserts that he qualifies for late registration because his mother applied for benefits under NACARA [Nicaraguan Adjustment and Central American Relief Act] in 1998 and that application was still pending.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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.

Nicaraguan nationals applying for TPS must demonstrate continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999. The initial registration period for Nicaraguans was from January 5, 1999, through August 20, 1999. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 1999, upon the applicant's re-registration during the requisite time period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he satisfied at least one of the criteria enumerated 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. *See* 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. *See* 8 C.F.R. § 244.9(b).

The record shows that the applicant filed his initial Form I-821, Application for Temporary Protected Status, on July 5, 2001 [EAC 01 274 50553]. On January 16, 2002, the director denied the application on the grounds that it was filed nearly two years after the close of the initial registration period on August 20, 1999, and the applicant had failed to establish that he was eligible for late TPS registration under any of the criteria enumerated at 8 C.F.R. § 244.2(f)(2). No appeal was filed. The current TPS application was filed on January 21, 2003, and denied on May 21, 2003, on the same grounds as the initial application. The applicant filed a timely appeal, claiming derivative eligibility for late TPS registration through his mother on the basis of an application she filed in 1998 under the NACARA program, which was still pending.

The records of Citizenship and Immigration Services (CIS) show that the applicant's mother, [REDACTED] filed a Form I-485, Application to Register Permanent Resident or Adjust Status [SRC 99 060 54662], on December 21, 1998, in which she identified the applicant as her son and a derivative beneficiary. The application was denied on February 14, 2004. The applicant's mother subsequently filed a TPS application [WAC 05 105 81475] on January 13, 2005, which was denied on May 3, 2006, for failure of the applicant to establish that she met the eligibility criteria for TPS. [REDACTED] filed another TPS application on June 5, 2006, which was denied on December 13, 2006, on the grounds that it was not filed during the initial registration period for Nicaraguan nationals and the applicant failed to establish that she was eligible for late TPS registration.

The foregoing records show that Martha L. Bravo has never been approved for TPS. Therefore, the applicant is not eligible for late registration under the criterion at 8 C.F.R. § 244.2(f)(2)(iv) – *i.e.*, as the “child of an alien currently eligible to be a TPS registrant.” The AAO also notes that the applicant, who was born October 17, 1978, turned 21 on October 17, 1999, at which time he ceased to be a “child” for immigration purposes. For the applicant to be eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(iv), therefore, his mother would have needed to file her initial TPS application in 1999, that application must ultimately have been approved, and the applicant must have filed his initial TPS application no later than December 16, 1999, in accordance with 8 C.F.R. § 244.2(g). Since his mother did not file her TPS applications until 2005 and 2006, the applicant would not have been eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(iv) even if one or the other had been approved. Nor does the applicant qualify for late registration under any of the other criteria enumerated at 8 C.F.R. § 244.2(f)(2)(i), (ii), and (iii). As for his mother’s application for permanent resident status or adjustment of status (Form I-485), which was still pending at the time the TPS application currently on appeal was filed in January 2003, that application did not confer any derivative eligibility upon the applicant for TPS because he ceased to be a dependent on that application when he turned 21 on October 17, 1999. As specified in 8 C.F.R. § 244.2(f)(2)(ii), a pending application of that nature must be the applicant’s own to confer eligibility for late TPS registration.

Based on the foregoing analysis, the director's decision to deny the application for TPS will be affirmed.

An alien applying for TPS 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 that burden.

**ORDER:** The appeal is dismissed.