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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
[WAC 05 090 78613]

OFFICE: CALIFORNIA SERVICE CENTER DATE: **AUG 22 2008**

IN RE: Applicant: [REDACTED]

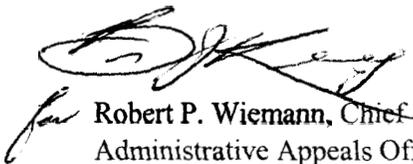
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. The applicant filed an appeal with the AAO. The AAO remanded the initial appeal to the California Service Center for further proceeding and a new decision. A new decision was issued, denying the application again. This new decision is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a citizen of Nicaragua who is applying for 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 he was eligible for late registration.

On appeal, the applicant reasserts his eligibility for TPS. The applicant claimed that the director, California Service Center, erroneously denied his application for TPS. The applicant further claimed that he had a pending application for adjustment of status during the initial registration period, that the adjustment of status application was denied on September 24, 1999, but that the notary who assisted him in filing the application failed to notify him that he should apply for TPS within 60-days of the denial of his application for adjustment of status.

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.

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 January 5, 2009, 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 his application with Citizenship and Immigration Services (CIS) on December 29, 2004.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he 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 or 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 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 record reflects that on November 13, 1998, the applicant filed an application for adjustment of status to that of a lawful permanent resident pursuant to section 202 of Public Law 105-100 of the Nicaraguan Adjustment and Central American Relief Act (NACARA). The district director denied the NACARA application on September 24, 1999 because the applicant failed to establish that he was physically present in the United States prior to December 1, 1995. On November 19, 2001, the applicant filed a motion with the district director, San Francisco, to reconsider the denial of his NACARA application. The record reflects that the applicant's motion to reconsider was submitted without a filing fee and was received more than one year after the denial of the NACARA application. As a result, the September 24, 1999 denial was the initial and only decision on the application.

The applicant filed an initial appeal of the director's decision to deny the TPS application. The Chief of the AAO, remanded the case back to the California Service Center to determine the status of the applicant's motion to reconsider.

On December 18, 2007, the applicant was requested to submit evidence establishing his eligibility for late registration for TPS as set forth in 8 C.F.R. § 244.2(f)(2). The applicant through counsel submitted a statement claiming that the applicant was under the impression that he was granted NACARA or had a pending motion for reconsideration. The applicant also claimed ineffective assistance of counsel for his NACARA application. The applicant did not submit any other evidence to establish that he was eligible for late initial registration or that his NACARA application was approved.

The director determined that the applicant had not submitted sufficient evidence to establish eligibility for late TPS registration. The director found that the applicant's NACARA application was denied on September 24, 1999, that the applicant failed to file for TPS within 60 days following the expiration or termination of the qualifying condition, and that the applicant had not filed a timely motion to reconsider. The director denied the TPS application on April 2, 2008.

On appeal, the applicant reasserts his eligibility for TPS claiming that the director, California Service Center, erroneously denied his application for TPS because he had an application for adjustment of status pending during the initial registration period, that the adjustment of status application was denied on September 24, 1999, but that the notary who assisted him failed to advise him that he should apply for TPS within 60-days of the denial of his adjustment of status.

The issue in this proceeding is whether the applicant is eligible for late registration for TPS under 8 C.F.R. § 244.2(f)(2)(iv).

The applicant claimed ineffective assistance of counsel as the reason he failed to file for TPS within 60 days following the expiration of the qualifying condition. However, this does not mitigate the applicant's failure to file his Form I-821, Application for Temporary Protected Status, within the initial registration period. As stated above, the applicant's NACARA application was denied on September 24, 1999 because the applicant failed to establish that he was physically present in the United States prior to December 1, 1995. The applicant submitted a motion to reconsider more than one year after the denial of the application. As a result, the September 24, 1999 denial was the only decision on the application. In order to establish eligibility for late initial filing, an applicant must file the TPS application with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) above. The applicant did not file his TPS application until December 29, 2004, more than five years later. There is no waiver of this requirement, even for humanitarian reasons. The applicant has not submitted any evidence to establish that he 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 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 this burden.

ORDER: The appeal is dismissed.