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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: **OCT 30 2008**

[EAC 08 064 50484, *appeal*]
[WAC 05 104 74389]

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 Vermont Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), 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 applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number WAC 05 104 74389 after the initial registration period had closed. The Director, California Service Center (CSC), denied the application on May 1, 2006, after determining that the applicant had failed to establish she was eligible for late initial registration. On June 5, 2006, the applicant filed an appeal from the denial decision which was rejected as untimely by the CSC Director on August 1, 2006. The applicant filed a motion to reconsider on August 21, 2006, the matter was re-opened and again denied by the CSC Director on December 14, 2006. The application was subsequently re-opened and again denied by the VSC Director on November 29, 2007.

The VSC Director denied the application after determining that the applicant had failed to register for TPS in a timely manner within the initial registration period.

On appeal, counsel argues that the denial of the application's adjustment application did not constitute the final agency denial of her adjustment application. Counsel indicates that her application was forwarded to the Immigration Court for review where she was entitled to renew her application for adjustment of status "NACARA" before the Immigration Judge. Counsel notes that the applicant filed for asylum/withholding of removal and argues that since she filed for her TPS benefits before her final appeal was dismissed by the Board of Immigration appeals, she timely filed for late registration for TPS.

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.

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

Persons applying for TPS offered to Nicaraguans must demonstrate continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. The initial registration period for Nicaraguans was from January 5, 1999 through August 20, 1999. The record shows that the applicant filed her application with Citizenship and Immigration Services on January 12, 2005.

To qualify for late registration, an applicant must provide evidence that during the initial registration period, he or she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

On appeal, counsel states the applicant is eligible for late initial registration because she had filed a Form I-485 under NACARA and the outcome of that application was pending when she had her deportation hearing before an Immigration Judge.

The record reflects that on April 18, 2002, her Form I-485 under NACARA was denied because she had not established her presence in the United States prior to December 1, 1995. On appeal, counsel argues that the denial of the application's adjustment application did not constitute the final agency denial of her adjustment application. Counsel indicates that her application was forwarded to the Immigration Court for review where she

was entitled to renew her application for adjustment of status "NACARA" before the Immigration Judge. However, the record reflects that the April 18, 2002 decision was a final determination concerning her Form I-485. The director's decision states that the decision cannot be appealed.

While the applicant's pending I-485 rendered her eligible for late registration, CIS regulations also require a late registration to be filed within a 60-day period immediately following the expiration or termination of such conditions. 8 C.F.R. § 244.2(g). In this case, since the applicant's I-485 was denied on April 18, 2002, her 60-day period for late registration expired on June 17, 2002. The applicant filed her application for TPS with the director on January 12, 2005.

Counsel notes that the applicant filed for asylum/withholding of removal and argues that since she filed for her TPS benefits before her final appeal was dismissed by the Board of Immigration appeals, she timely filed for late registration for TPS. However, to confer eligibility for late initial registration to the applicant, her Form I-589, Application for Asylum and for Withholding of Removal, would have had to be pending during the initial registration period. It is noted that her I-589 was filed on December 12, 2003 with the Immigration Court in Houston, Texas.

The applicant has submitted evidence in an attempt to establish her qualifying continuous residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file her Application for Temporary Protected Status within the initial registration period. The applicant has not submitted evidence to establish that she has met the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS is affirmed.

In removal proceedings held on January 22, 2004, an Immigration Judge in Houston, Texas, ordered the applicant deported to Nicaragua. It is further noted that the record contains an outstanding Form I-205, Warrant of Removal/Deportation, issued by the Field Office Director of the Houston, Texas, office of Citizenship and Immigration Services on November 22, 2005.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements cited 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.