



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JAN 30 2009

[WAC 05 260 70874]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

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

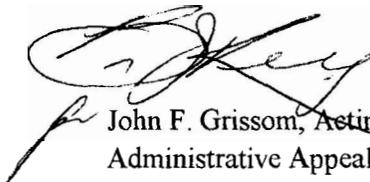
ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC), 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 the applicant filed an initial TPS application on January 20, 2004, under United States Citizenship and Immigration Services (USCIS) receipt number SRC 04 076 54518. The Director, Texas Service Center (TSC), denied that application on May 26, 2004, after determining that the applicant had failed to establish his eligibility for late initial registration. There is nothing in the record to indicate that the applicant appealed the director's decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on June 17, 2005, which was accepted as a re-registration application. On February 5, 2006, the director issued a Notice of Intent to Deny the applicant's re-registration application. The purpose of the notice was for the applicant to submit evidence establishing his eligibility for late registration, his continuous residence and continuous physical presence in the United States during the qualifying period, his date of entry into the United States, and his national identity. On April 12, 2006, the CSC 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. The applicant has now submitted an appeal from the director's decision.

On appeal, counsel states that the applicant was always in a pending legal status from the filing for NACARA to the final order to depart the United States by May 31, 2005.

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.

The record of proceedings contains sufficient evidence of the applicant's continuous residence and continuous physical presence during the requisite periods as well as evidence establishing his nationality and identity as it includes a copy of his Nicaraguan Identification Card dated November 23, 1987. The record also reveals that during the initial registration period, the applicant had a pending Form I-485, Application to Register Permanent Residence or Adjust Status (NACARA), which was denied by the TSC director on November 15, 2001. In order to be eligible for late registration, the application must have filed his TPS application within 60 days of the expiration or termination of the qualifying condition. In this case, the applicant must have filed his initial TPS application by January 14, 2002. The applicant, however, did not submit his initial TPS application until January 20, 2004. The record further indicates that the applicant's subsequent NACARA application, dated October 30, 2003, was denied by the Immigration Judge on October 30, 2003. At the same time, the applicant was issued an order of voluntary departure to depart the United States by February 7, 2004. Although the applicant filed a TPS application within 60 days of the end of his voluntary departure period, the application failed to meet the requirements under 8 C.F.R. § 244.4(f)(2), because he did not have such a grant during the initial registration period.

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

There is no indication that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration. Moreover, there is no evidence in the file to suggest that the applicant is eligible for late registration for TPS under 8 C.F.R. § 244.2(f)(2).

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.