



U.S. Citizenship
and Immigration
Services

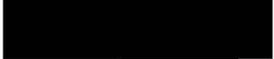
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FILE:



Office: VERMONT SERVICE CENTER

Date: OCT 14 2009

[EAC 06 255 77414]

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.

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. An appeal was filed and subsequently dismissed by the Administrative Appeals Office (AAO). The application will be reopened, *sua sponte*, by the Chief, 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 determined that the applicant failed to establish she: 1) had continuously resided in the United States since December 30, 1998; 2) had been continuously physically present in the United States since January 5, 1999; and 3) was eligible for late registration. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the director “factually and legally erred” in denying the applicant’s TPS application.

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 as 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 term *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 term *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.

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, 2010, upon the applicant's re-registration during the requisite period.

The initial registration period for Nicaraguans was from January 5, 1999 to August 20, 1999. The record shows that the applicant filed her initial TPS application on May 31, 2006.

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 United States Citizenship and Immigration Services (USCIS). 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 first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding confirms that the applicant filed her application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from January 5, 1999 through August 20, 1999, 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 the late initial registration. 8 C.F.R. § 244.2(g).

On December 6, 2006, the applicant was provided the opportunity to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing her continuous residence in the United States since December 30, 1998 and her continuous physical presence in the United States from January 5, 1999 to the date of filing the application. The applicant, in response, failed to provide evidence in an attempt to establish continuous residence and continuous physical presence during the qualifying period. She did not present evidence of her eligibility for late registration. Therefore, the director denied the application.

On appeal, counsel states that the applicant “factually and legally erred” in denying the applicant’s TPS application because she timely filed her application for TPS following the denial of her motion to reconsider the decision denying her Form I-485, Application to Register Permanent Residence or Adjust Status.

The record does demonstrate that the applicant filed a Form I-485 under receipt number SRC 00 003 53124 on September 8, 1999. The Director, New York District, denied that application on September 19, 2005. The applicant filed a motion to reopen the decision on October 14, 2005. The director denied that motion on May 31, 2006. The applicant filed her TPS application on the same day. The applicant filed her TPS application within 60 days of the date her Form I-485 was denied and no longer subject to further review. However, the Form I-485 was not filed during the initial registration period for TPS. The initial registration period for Nicaraguans was from January 5, 1999 to August 20, 1999. The applicant did not file her Form I-485 until September 8, 1999. Consequently, she is not eligible for late initial registration.

The applicant has not submitted sufficient evidence to establish that she 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 temporary protected status will be affirmed.

The second and third issues in this proceeding are whether the applicant has established her continuous residence in the United States since December 30, 1998 and her continuous physical presence in the United States from January 5, 1999.

The record contains the following evidence:

As stated above, the applicant was requested on December 6, 2000 to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant failed to submit any additional evidence to establish her continuous residence and her

continuous physical presence in the United States during the qualifying period. However, the applicant has submitted the following documentation throughout the application process:

1. Copies of statements from [REDACTED] and [REDACTED].
2. Copies of a Postal Money Order dated October 12, 2005; prescription refills dated May 2, 2001 and May 11, 2004; 2001 Estimated tax Voucher; receipts from [REDACTED] dated April 11, 2001, August 13, 2002, and January 21, 2004; a U.S. Postal Service Express Mail receipt dated August 13, 2001; a date-stamped envelope dated July 25, 2001; a report from Metropolitan Hospital Center dated July 23, 2002; a refund receipts from the New York State Department of Taxation and Finance dated May 3, 2002, May 8, 2003, and April 29, 2004 and May 4, 2005; money transfer receipts dated May 6, 2002, October 14, 2003, April 26, 2004, September 16, 2004, November 1, 2004, February 5, 2005, October 26, 2005, November 4, 2006, March 31, 2007, and April 20, 2007.
3. Copies of Emergency Department Patient Discharge Instructions dated March 8, 2005; a bill from Metropolitan Hospital Center dated April 10, 2005; a HHC Options Program Application dated April 4, 2005; a bill from Mt. Sinai Elmhurst Faculty PRAC Group dated July 16, 2005; envelopes date-stamped December 29, 2005, April 3, 2006, and July 13, 2006; a Final Notice from HHC dated September 27, 2003; a Financial Interview Registration Slip dated May 8, 2002; Care Credit bills with due dates of March 10, 2006 December 9, 2007 and September 10, 2008; a Keyspan Energy Delivery bill dated February 20, 2008; 2000 – 2007 tax documents.
4. A copy of a July 28, 1999 letter from National Pediatrics Center.
5. Copies of out patient bills and other medical documentation from Metropolitan Hospital Center in New York, New York, indicating that the applicant has been treated in the facility from July 1998 through April 1999.
6. Copies of a December 9, 1999 appointment letter from the INS and a 1999 Form 1040, U.S. Individual Income Tax Return.

[REDACTED] N.Y.C. Neighborhood WIC Program states that the applicant began activity with the WIC program from 1994 through 1996. [REDACTED], the applicant's sister states that the applicant has lived with her since her arrival in the United States in 1992. [REDACTED], and [REDACTED] state that they have known the applicant for seven years, since 1992. [REDACTED] states that she has known the applicant since 1993 and that the applicant babysat her son in 1994. [REDACTED] states that the applicant has been his tenant since

November 20, 1995. These statements have little evidentiary weight or probative value. These statements are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided.

The letter from National Pediatrics Center indicates that in 1995, the applicant was one of the caregivers for her niece. However, this letter only attests to the applicant's presence in the United States at that time. Similarly, the outpatient bills and other medical documentation can only attest to the applicant's presence in the United States on the days of treatment. The Income tax Return and INS appointment letter pertain to dates subsequent to the qualifying dates to establish continuous residence and continuous physical presence in the United States. None of this documentation can establish the applicant's continuous residence in the United States since December 30, 1998 and her continuous physical presence in the United States from January 5, 1999 to the date the TPS application was filed. The remaining evidence is all dated subsequent to the requisite dates to establish continuous residence and continuous physical presence in the United States. Therefore, this evidence is of little or no probative value. Consequently, the director's decision to deny the application for temporary protected status on these grounds will also be affirmed.

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.