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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

M1

[Redacted]

DATE: **APR 16 2012** Office: VERMONT SERVICE CENTER

FILE [Redacted]

IN RE: Applicant:

[Redacted]

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

ON BEHALF OF APPLICANT:

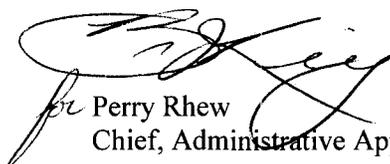
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and action.

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: 1) that he was eligible for late registration; and 2) continuous physical presence in the United States since January 5, 1999.

On appeal, counsel asserts that while in the custody of the Immigration and Naturalization Service in 1999, the applicant filed a Form I-821, Application for Temporary Protected Status, along with filing fees. Counsel states that the applicant appeared for his scheduled TPS interview on August 6, 1999.

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 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 Secretary 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.

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. 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 granted until January 5, 2012, upon the applicant's re-registration during the requisite period.

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. 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).

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 U.S. 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 AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reflects that on August 15, 1996, the applicant was granted voluntary departure from the United States. On June 2, 1997, the applicant illegally reentered the United States. On December 2, 1997, the applicant filed Form I-485, Application to Register Permanent Residence or Adjust Status. On April 21, 1999, the District Director, San Francisco, California denied the Form I-485. On April 21, 1999, a Form I-205, Warrant of Removal/Deportation, was issued. On April 22, 1999, a Form I-871, Notice of Intent/Decision to Reinstate Prior Order, was issued. On April 28, 1999, the applicant was released under an order of supervision and posted a \$5,000 bond. *See* 8 C.F.R. § 241.5(a). On April 18, 2000, the applicant filed an untimely appeal from the denial of the Form I-

485.¹ On October 5, 2005, a replacement Form I-220B, Order of Supervision, was issued that appears to be still in effect.

On September 23, 2011, the director denied, in part, the current TPS application because it was concluded that the applicant had failed to establish he was eligible for late registration. The director determined that the applicant first filed a TPS application in 2003. A review of the record of proceeding, however, disputes this finding as the record contains the following:

1. A Form I-821 was signed by the applicant on April 21, 1999, and fee receipted on April 22, 1999.²
2. A Form G-56 dated July 26, 1999, from the San Francisco District Office, advising the applicant to appear for a "TPS Interview" on August 6, 1999 at 8:30 a.m. The form has a received date stamp of August 6, 1999.
3. A notice dated August 5, 1999 from the San Francisco District Office, informing the applicant to appear at the Application Support Center at 630 Sansome Street, Room 710, San Francisco, California during the week of August 6, 1999, in order to have his fingerprints processed.
4. The interviewing officer's notes of August 6, 1999, taken at the time of the applicant's TPS interview.
5. On June 28, 2002, the applicant filed a re-registration TPS application and Form I-765, Application for Employment Authorization. On November 5, 2002, the Director, California Service Center, issued a Notice of Intent to Deny under receipt number [REDACTED] which requested the applicant to submit evidence of a previously filed Form I-821. In response, the applicant's former counsel provided a copy of the Form I-821 signed by the applicant on April 21, 1999. The director, in denying the Form I-765 on January 30, 2003, noted that Service records did not indicate the applicant to have a pending Form I-821.

There is no indication in the record of proceeding or in USCIS database that the initial Form I-821 has ever been adjudicated. It is concluded that the applicant's Form I-821 filed on April 22, 1999 is still pending. Therefore, the decision of the director will be withdrawn.

The case will be remanded to the director for full adjudication of the initial application. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS. As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. §1361.

¹ Pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1), an appeal that is not filed within the 30-day period must be rejected as improperly filed.

² Fee receipt number [REDACTED]

Finally, it is noted that on November 18, 2004, the applicant filed an appeal from the denial of a TPS application filed under receipt number [REDACTED]. That appeal remains unadjudicated and will be addressed under separate cover.

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above and entry of a new decision.