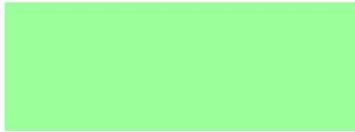




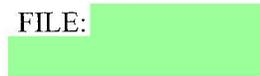
U.S. Citizenship  
and Immigration  
Services

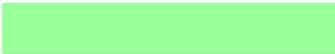
(b)(6)



DATE: JUL 25 2013

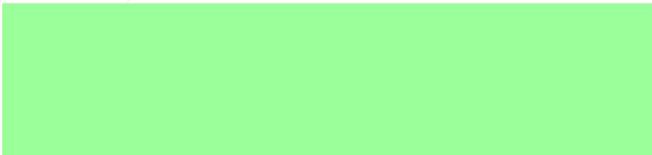
Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

  
Ron Rosenberg  
Acting 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 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, counsel asserts that the applicant had a pending application for adjustment of status during the initial registration period; that the application was subsequently denied and an appeal was filed before the Board of Immigration Appeals (BIA); that the BIA dismissed the appeal on April 20, 2005 ; and that the application for adjustment of status was still pending at the time of the initial TPS application filing in 2004. Citing 8 C.F.R. § 1240.34, counsel asserts that the applicant renewed his application for adjustment of status in removal proceedings.

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 Hondurans 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, 2015, 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 October 12, 1998, the applicant filed a Form I-485, Application to Register for Permanent Residence or Adjust Status under section 202 of the Nicaraguan and Central American Relief Act (NACARA). On November 15, 2001, the Form I-485 was denied by the District Director, Houston, Texas.

At time of his removal hearing on August 28, 2003, the applicant was provided the opportunity to submit a Form I-485 before October 31, 2003. The applicant submitted a Form I-485 under

NACARA dated October 30, 2003. On December 9, 2003, the Form I-485 was denied by the immigration judge. The applicant was granted voluntary departure on or before February 7, 2004. The applicant appealed the decision of the immigration judge (IJ) to the BIA. On April 20, 2005, the BIA, affirmed without opinion, the IJ's decision.

The applicant filed his initial TPS application [REDACTED] on January 20, 2004. On May 26, 2004, the Director, Texas Service Center, denied the application because it was determined that the applicant had failed to establish his eligibility for late registration

The applicant filed another TPS application [REDACTED] on June 5, 2005, and indicated that it was a re-registration application. On April 12, 2006, the Director, California Service Center, denied the application as the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. The AAO, in dismissing the appeal, on January 30, 2009, concurred with the director's finding.

On November 10, 2011, the applicant filed the current TPS application.

Counsel's statements on appeal have been considered. However, in order to be eligible for late registration, a TPS application must have been filed within 60 days of the expiration or termination of the denial of the Form I-485 dated November 15, 2001. A new clock starts on the date of the renewed Form I-485. There were no other proceedings (cancellation of removal, discretionary relief, recommendation against deportation, or suspension of deportation) pending from November 15, 2001 through October 29, 2003. Contrary to counsel's assertion, the applicant was neither admitted nor paroled into the United States.

Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration 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.