



U.S. Citizenship
and Immigration
Services

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ML

[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date: NOV 13 2007

[LIN 02 213 50024]

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:

SELF-REPRESENTED

INSTRUCTIONS:

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

John D. Vaughan
for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Nebraska Service Center (NSC), 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 a first Form I-821, Application for Temporary Protected Status, with the Nebraska Service Center (NSC) on June 7, 2000, after the initial registration period for Nicaraguans had ended (LIN 00 226 50776 relates). On August 15, 2001, that application was denied due to abandonment because the applicant failed to appear for a fingerprinting appointment required in connection with her application. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed the current Form I-821 with the NSC on June 4, 2002. The application was denied by the NSC director on March 11, 2003, because the applicant failed to establish her eligibility for late registration as well as her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant submits a letter and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 244.3;
- (e) Is not ineligible under § 244.4; and
- (f)
 - (1) Registers for Temporary Protected Status 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 initial registration period for Nicaraguans was from January 5, 1999, through August 20, 1999. As previously discussed, the applicant filed the current application with Citizenship and Immigration Services (CIS) on June 4, 2002.

To qualify for late registration, the 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).

The record reveals the following regarding the applicant's claim to TPS eligibility:

1. She initially entered the United States on December 23, 1998, returned to Nicaragua on February 23, 1999, re-entered the United States on March 18, 1999, returned to Nicaragua on April 7, 1999, re-entered the United States on April 21, 1999, returned to Nicaragua on June 9, 1999, and last re-entered the United States on June 22, 1999. Each of the applicant's entries/re-entries into the United States was as a visitor under the Visa Waiver Pilot Program (VWPP).
2. She claims to have married J [REDACTED] in Nicaragua on December 21, 1985. There is no marriage certificate in the record to support this claim.
3. Her claimed spouse was issued an Employment Authorization Card (EAC) as a TPS registrant (A12) on July 10, 2003, with an expiration date of January 5, 2005.

4. Her mother died in Nicaragua on June 15, 1999, of "cancer terminal and paro respiratorio."¹
5. Her claimed children, [REDACTED] started attending school in the United States in the second half of the 1998-1999 academic year;
6. She started receiving utility bills and other documentation at an address in the United States [REDACTED] in or about October 1999. The remaining documentation post-dates October 1999.

Based on the information contained in the record, it is concluded that, while the applicant made several visits to the United States from December 23, 1998, through June 22, 1999, she did not establish qualifying continuous residence and continuous physical presence in the United States until at least the late spring/early summer of 1999, after the dates required to meet the continuous residence and continuous physical presence requirements described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application will be affirmed.

Furthermore, the applicant has failed to provide sufficient documentation to establish that, at that time of the initial registration period, she was the spouse of an alien currently eligible to be a TPS registrant. She has not submitted her marriage certificate, with English translation. Therefore, the application must also be denied because the applicant has failed to establish that her application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2).

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.

¹ Any document containing a foreign language submitted to CIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). In that the translation of the death certificate is incomplete (the cause of death has not been translated properly into English), it is concluded that the applicant has failed to comply with the aforementioned requirement, and the document submitted will not be considered in the rendering of this decision.