

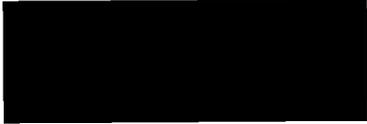


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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

MAY 24 2001

FILE# [Redacted]

Office: California Service Center

Date:

IN RE: Applicant: [Redacted]

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

IN BEHALF OF APPLICANT: Self-represented

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that he is a national of a foreign state designated by the Attorney General and eligible for the granting of Temporary Protected Status (TPS) under § 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a.

On February 17, 1994, the applicant filed a Request for Asylum and stated that he was a citizen of Guatemala and he arrived in the United States in April 1990. In support of that application, he provided a birth certificate showing that he was born in San Marcos, Guatemala on March 28, 1963. The applicant also provided a Form G-325 A containing his biographic information and a signed statement in which he indicated that he was born in Guatemala and described the various reasons why he was requesting asylum in the United States.

The director concluded that applicant is a citizen and national of Guatemala and that country has not been so designated under § 244 of the Act. The director denied the application accordingly.

On appeal, the applicant states that after arriving in the United States he signed some documents and noticed that an error was made regarding his citizenship. The applicant asserts that he went to the Honduran Consulate and, after being interrogated, his Honduran passport was extended. The applicant submits an uncertified copy of a Honduran passport containing the name [REDACTED] and showing that on October 3, 2000, its validity was extended to March 5, 2001. The applicant insists that a data entry error was made regarding his citizenship, and he seeks help.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. 244, provide that an applicant is eligible for temporary protected status only if such alien establishes that he or she:

- a. Is a national of a state designated under § 244(b) of the Act;
- b. Has been continuously physically present in the United States since a designated date;
- c. Has continuously resided in the United States since such date;
- d. Is admissible as an immigrant;
- e. Is not ineligible under 8 C.F.R. 244.4; and
- f. Pursuant to § 303(b) (1) of IMMACT 90, has timely registered for such status.

In Matter of Ognibene, 18 I&N Dec. 425 (Reg. Comm, 1983), it was held that in the case of a dual national alien nonimmigrant, the nationality claimed or established by him at the time of his entry into the United States must be regarded as his sole or operative nationality for the duration of his temporary stay in the United States.

The submission of a birth certificate showing birth in Guatemala, a biographic report showing Guatemalan nationality, a signed statement attesting to birth in Guatemala and the assertion that death threats were made against him by members of the Guatemalan Organization of Revolutionary Armed People (ORPA) goes well beyond allegations that data entry errors were made in this matter. The applicant's submission of an uncertified copy of a Honduran passport on appeal only contradicts other evidence in the record. Following Ognibene, the applicant submitted documentation to initially establish that he is a citizen and national of Guatemala. That determination has not been overcome on appeal.

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 § 244 of the Act. The applicant's country of nationality has never been designated under § 244 of the Act; therefore, the applicant has failed to meet this burden.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.