



U.S. Citizenship  
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Services

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**JUN 01 2006**  
Date:

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER  
[WAC 05 103 82380]

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:  
[REDACTED]

INSTRUCTIONS:

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a 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 applicant filed his initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on July 1, 2002, under receipt number SRC 02 216 54239. The Director of the Texas Service Center denied that application on December 6, 2002, due to abandonment because the applicant failed to respond to a request for additional evidence dated August 23, 2002. The applicant did not file a motion to reopen the denial decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 11, 2005, and indicated that he was re-registering for TPS or renewing his temporary treatment benefits.

The director denied the application on July 23, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration or renewal of his temporary treatment benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17. If an applicant is applying for renewal of temporary treatment benefits, he or she must have a pending TPS application.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS or to renew temporary treatment benefits. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant may apply for TPS during the initial registration period, or:

- (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 Hondurans was from January 5, 1999 through August 20, 1999. The record reveals that the applicant filed the current TPS application with CIS on January 11, 2005.

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.

The burden of proof is upon the applicant to establish that he 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for this reason.

It is noted that the applicant was apprehended by the United States Border Patrol on December 28, 1994, near Sarita, Texas, after having entered the United States without inspection. The applicant identified himself to the apprehending officers as a national and citizen of Guatemala. He had in his possession a Guatemalan national photo identification document indicating that he was a national and citizen of Guatemala and that he was born in Villa Canales, Guatemala, on June 21, 1971. The applicant was placed in removal proceedings. On February 11, 1995, the applicant filed a Form I-589, Application for Asylum and For Withholding of Removal. The applicant indicated on the application that he was a native and citizen of Guatemala. The applicant signed the asylum application on February 8, 1995, certifying under penalty of perjury that all information contained on the application was true and correct and that no supporting documents submitted with the application were fraudulent. The applicant claimed on the asylum application that he had been detained by the Guatemalan army and accused of being a guerilla. The applicant asserted that he refused to confess to their charges because he had never engaged in any anti-government activity. He claimed he was repeatedly harassed, threatened by the Guatemalan army, and advised to leave the country.

When the applicant failed to appear for his removal hearing as scheduled on August 30, 1995, an Immigration Judge in Miami, Florida, found that the applicant had failed to establish eligibility for any relief from removal and ordered the applicant deported to Guatemala.

When the applicant filed his initial Form I-821 on July 1, 2002, he claimed to be a national and citizen of Nicaragua and submitted Nicaraguan national identity documents in support of the application. The applicant has not provided any explanation for this discrepancy in his claimed nationality. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988). In view of the foregoing, it is concluded the applicant has not established his identity and nationality as described at 8 C.F.R. § 244.9(a)(1). The applicant has also failed to establish continuous residence and continuous physical presence in the United States during the requisite periods as described at 8 C.F.R. §§ 244.2(b) and (c). Furthermore, whether the applicant made a false claim to Guatemalan citizenship on the asylum application or a false claim to Nicaraguan citizenship on his TPS applications, it is concluded that the applicant is inadmissible to the United States under section 212(a)(6)(c)(i) of the Act as an alien who attempted to obtain an immigration benefit through fraud or misrepresentation of a material fact. Therefore, the application must be denied for these reasons as well.

It is noted that the record contains an outstanding Form I-205, Warrant of Deportation, issued by the District Director, Miami, Florida, on August 30, 1995.

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.