

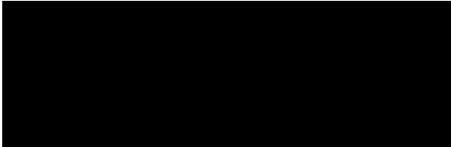


U.S. Citizenship  
and Immigration  
Services

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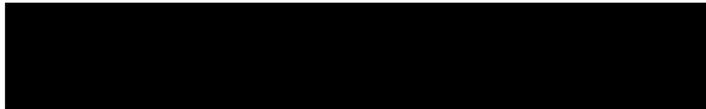
Office: TEXAS SERVICE CENTER

Date: AUG 15 2007

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IN RE:

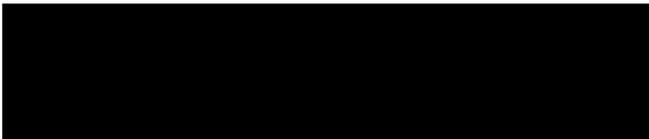
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas Service Center. A subsequent appeal was dismissed by the Chief, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The previous decision of the AAO will be affirmed and the motion to reopen will be dismissed.

The applicant is stated to be a native and 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 for TPS because the applicant failed to establish he was eligible for late registration.

A subsequent appeal from the director's decision was dismissed on August 29, 2005, after the Chief, AAO agreed that the applicant had failed to establish that he was eligible for late registration. The Chief, AAO also determined that because the applicant had received Canadian citizenship, he had firmly resettled in another country before arriving in the United States and was ineligible for TPS for this additional reason.

On motion, counsel acknowledges that the applicant's Form I-485, Application to Adjust to Permanent Resident Status, was denied on January 10, 2000, when it was denied for lack of prosecution because he did not appear for his interview. Counsel argues that his client did not appear for his interview on that date because he did not receive his notice to do so and he was a minor at that time. Since the Form I-485 was denied due failure to appear, 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. Counsel provides no evidence that a motion to reopen was filed in 2000, alerting Citizenship and Immigration Services that there was a potential problem concerning the applicant's non-receipt of notice. Nor has counsel provided evidence nor any rationale for exempting his client from promptly filing or having an TPS application filed in his or her behalf because of the his age. It is noted that the applicant's Form I-485 was filed in his behalf when he was even younger.

Counsel inadequately addresses the applicant's eligibility for late initial registration and does not address the second issue which is that he had firmly resettled in another Canada.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO.

**ORDER:** The motion to reopen is dismissed. The previous decision of the AAO dated August 29, 2005 dismissing the appeal is affirmed.