



# TEMPORARY PROTECTED STATUS GRANTED TO HONDURANS AND NICARAGUANS.

by Francesco Isgro\*

On January 5, 1999, Attorney General Janet Reno invoked her authority under INA § 244 to extend Temporary Protected Status (TPS) to nationals of Honduras and Nicaragua who have resided in the United States since December 30, 1998. See 64 Fed. Reg. 524 (January 5, 1999). The Attorney General found that, "due to the environmental disaster and substantial disruption of living conditions caused by Hurricane Mitch," the countries of Honduras and Nicaragua are "unable, temporarily, to handle adequately" the return of their nationals. Similarly, the INS Commissioner, Doris Meissner, stated that, "[t]his decision builds on the Administration's commitment to pro-

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vide humanitarian assistance to the people of those countries that have been so devastated by Hurricane Mitch."

Under INA § 244(b)(1), the Attorney General is authorized to grant TPS in the United States to eligible nationals of designated foreign states or parts of such states upon finding that such states are experiencing ongoing armed conflict, environmental disaster, or other extraordinary and temporary conditions.

The TPS period for Hondurans and Nicaraguans will last for 18 months, beginning on January 5, 1999, and ending on July 5, 2000. During the designation period, eligible Hondurans and Nicaraguans will not be subject to removal and will be eligible for permission to work in the United States.

Attorney General Janet Reno's designation covers an estimated 100,000 Hondurans and from 45,000 to 70,000 Nicaraguans who have resided in the United States as of December 30, 1998. However, most of these Nicaraguans are eligible for adjustment of status under Section 202 of the Nicaraguan Adjustment and Central American Relief Act (NACARA).

## PROCEDURES

To obtain the benefits of TPS, nationals of Honduras and Nicaragua must register with the INS between January 5, 1999, and July 5, 1999. Applicants must submit both an Application for Temporary Protected Status, Form I-821, and an Application for Employment Authorization, Form I-765, along with evidence of national-

ity and residence in the United States as of December 30, 1998. These forms are available from the toll-free INS Forms line, 1-800-870-3676, and from the INS Website, [www.ins.usdoj.gov](http://www.ins.usdoj.gov).

Form I-821 must include a \$50 filing fee, along with a \$25 fingerprinting fee. Applicants for employment authorization should submit a Form I-765 with the \$100 filing fee. Applicants who already have or do not wish to receive employment authorization still must submit a completed Form I-765, but without the accompanying fee. An applicant may request a waiver of TPS-related application filing fees - but not the fingerprinting fee - by submitting proper documentation of inability to pay.

The forms must be mailed to the INS Service Center with jurisdiction over the state where the applicant resides. Applicants will be notified by the Service Centers as to where and when to obtain their fingerprints.

Honduras and Nicaragua join Bosnia, Burundi, Kosovo Province in the state of Serbia-Montenegro, Liberia, Montserrat, Sierra Leone, Somalia and Sudan as countries currently designated for TPS. The United States also granted TPS to Lebanon from March 1991 to March 1993; Kuwait, from March 1991 to March 1992; and Rwanda, from June 1994 to June 1995.

## STAYS OF REMOVAL EXTENDED FOR GUATEMALANS AND SALVADORANS

The INS Commissioner also announced on December 30, 1998, that the INS will extend for 60 days - through March 8, 1999 - the stays of removal for Guatemalans and Salvadorans that were to expire January 7, 1999. Commissioner Meissner noted that many Guatemalans and Salvadorans currently in the United States will be eligible to gain lawful immigration status under Section 203 of NACARA. None theless, the decision not to extend TPS to Guatemalans and Salvadorans was criticized by immigrants' groups.

In the President's signing statement to NACARA, the President noted that the Administration would seek to overcome disparities created by the legislation. INS published a proposed rule on Section 203 on November 24, 1998, and the public comment period for that proposed rule ends January 25, 1999. INS will evaluate the comments and issue an interim or final rule implementing the legislation.

The TPS and stays of removal decisions were made by the Attorney General after consultation with the Department of State and after consideration of additional information from the U.S. Agency for International Development (USAID), the Department of Defense, press accounts and non-governmental organizations. This information indicated that the extent of the death, displacement and damage in Honduras and Nicaragua created extraordinary temporary conditions that render a designation of TPS appropriate for these two countries.

The INS has also set up a toll-free telephone number for the public to call with questions on the TPS program for Nicaraguans and Hondurans. That number is 1-888-557-5398.

## QUESTIONS AND ANSWERS ABOUT TPS FOR HONDURANS AND NICARAGUANS

Who is eligible?

The designation covers Hondurans and Nicaraguans who have continuously resided in the United States as of December 30, 1998. The applicant must also be admissible as an immigrant, although some grounds of inadmissibility may be waived, and must apply for TPS between January 5, 1999, and July 5, 1999. Applicants who have been convicted of a felony or two or more misdemeanors committed in the United States or those who are barred from asylum are not eligible for TPS.

What is the procedure to apply for TPS?

Applicants will need to file an Application for Temporary Protected Status, Form I-821, along with the supporting evidence for TPS, and an

Application for Employment Authorization, Form I-765, for work authorization. The completed forms must then be mailed to the INS Service Center with jurisdiction over where the applicant lives. The INS Service Center will notify applicants as to when to get fingerprints taken at their nearest INS Application Support Center (ASC). The costs associated with applying for TPS are \$50 to file for TPS, \$100 to file for a work authorization card, and \$25 to be fingerprinted, for a total cost of \$175.

Applicants who already have or do not wish to receive employment authorization still must submit a completed Form I-765, but without the accompanying fee. Applicants may request a waiver of TPS-related application filing fees - but not the fingerprinting fee - by submitting proper documentation of inability to pay.

Additional information can be obtained from the INS by calling the INS Forms Line, 1-800-870-3676, where the applicant can order the necessary TPS forms. The forms can also be obtained from the INS Website at: [www.ins.usdoj.gov](http://www.ins.usdoj.gov).

#### **APPLICANTS WILL NOT HAVE TO VISIT THEIR LOCAL INS DISTRICT OFFICE DURING THE TPS PROCESS.**

What happens to Hondurans and Nicaraguans currently in detention?

In general, those in detention who are eligible for TPS will be released. However, many aliens— including those who have been convicted of a felony or two or more misdemeanors committed in the United States and those for whom an asylum bar would apply - are not eligible for TPS and will not be released from detention.

Will Hondurans or Nicaraguans who arrive in the United States after December 30, 1998, be eligible for TPS?

No. TPS is an emergency relief measure intended to assist those nationals of a given country who are already in the United States at the time of the designation. The cases of Hondurans and Nicaraguans who

arrive after December 30, 1998, will be handled in accordance with U.S. immigration law.

Will Honduran and Nicaraguan Nationals protected by TPS be permitted to travel to their home countries during the TPS period?

INS will base its decision on an advance parole application and decide on a case-by-case basis.

#### **INS ADOPTS GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS**

In conjunction with the proclamation of Human Rights Day, marking the 50th anniversary of the Universal Declaration of Human Rights, the INS, on December 10, 1998, released guidelines to provide Asylum Officers with background and guidance on adjudicating children's asylum claims. The INS Commissioner Doris Meissner said that, "the new guidelines not only reflect the Administration's continued international leadership in humanitarian issues, they also demonstrate that INS is taking concrete action to further the protection needs of refugee children."

During the last decade, the plight of refugee children has received increasing attention from the international community, and particularly from the United Nations High Commissioner for Refugees. Human rights violations against children arise in abusive labor practices, forced prostitution, and trafficking in children. In some countries children under the age of 15 are forcibly recruited by guerrillas or regular armies to participate in military conflicts. In light of the unique vulnerability and circumstance of children seeking asylum, the new guidelines provide Asylum Officers with child-sensitive interview procedures and analysis regarding the most common issues that may arise in these cases.

In refining existing asylum procedures, the guidelines recognize that children under the age of 18 may experience persecution differently from adults and may not present testimony with the same degree of precision as

adults. The guidelines suggest child-sensitive procedures to help INS Asylum Officers and overseas Immigration Officers interact more meaningfully with children during asylum or refugee interviews.

The INS Guidelines make the United States only the second country in the world, Canada having being the first in 1996, to adopt special procedures for considering the unique needs of its youngest asylum seekers. Jeff Weiss, Acting Director of the Office of International Affairs, which oversees the asylum program at the INS, noted that the Women's Commission for Refugee Women and Children, having initially raised its concerns with the INS, was instrumental in developing the Guidelines.

The INS emphasized that the Guidelines do not change the law in any way, rather they help provide the child asylum seeker with a "comfortable, secure environment in which to best present his or her claim." For example, the Guidelines suggest that it is generally in the child's best interest to allow a trusted adult to attend an asylum interview. "Asylum officers may have to build a rapport with the child to elicit claims and to enable the child to recount his or her fears and/or past experiences," note the Guidelines. According to the INS, all Asylum Officers in the United States will receive training designed to help them use and implement the new guidance and reinforce their awareness of children's and cross-cultural issues.

The INS Resource Information Center (RIC) will also issue country conditions information to inform Asylum Officers of the legal and cultural situation of children in their countries of origin, on the incidence of exploitation and other victimization, and on the adequacy of state protection afforded to children. The guidelines and information gathered by the RIC will enhance the ability of INS officers to make informed, consistent and fair decisions during both the interview process and the legal analysis of the claim. ■