

EXHIBIT 44

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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (USCIS)
Washington, DC 20529-3700



U.S. Citizenship
and Immigration
Services

October 26, 2017

DECISION MEMORANDUM FOR THE ACTING SECRETARY

FROM:

L. Francis Cissna
Director

27A/C

SUBJECT:

Nicaragua's Designation for Temporary Protected Status

Purpose: Nicaragua's existing designation for Temporary Protected Status (TPS) will expire on January 5, 2018. At least 60 days before the expiration of a TPS designation, the Secretary, after consultation with appropriate U.S. Government agencies, must review the conditions in a country designated for TPS to determine whether the conditions supporting the designation continue to be met. If the Secretary determines that the country no longer meets the statutory conditions for designation, she shall terminate the designation. If the Secretary does not determine, however, that the conditions for designation are no longer met, the TPS designation will be extended for 6 months, or in the Secretary's discretion, 12, or 18 months.¹

U.S. Citizenship and Immigration Services (USCIS) has completed a review of the conditions in Nicaragua and is presenting options and a recommendation for your consideration. In summary, USCIS assesses that, although Nicaragua continues to face development challenges, the country suffers few remaining residual effects of Hurricane Mitch, which formed the basis of Nicaragua's designation for TPS in 1999. Accordingly, USCIS recommends that you terminate Nicaragua's TPS designation.

As part of the review process, USCIS staff has consulted with the Department of State (DOS). However, to date, Secretary Tillerson has not weighed in and DOS has not provided any recommendation.

Nicaragua's TPS Designation: On January 5, 1999, then Attorney General Reno designated Nicaragua for TPS on environmental disaster grounds, specifically, because of the devastation caused by Hurricane Mitch in October of 1998.²

The reason for Nicaragua's designation for TPS stated in the Federal Register at the time of the initial designation was that "*Hurricane Mitch swept through Central America causing severe flooding and associated damage in Nicaragua. ... [D]ue to the environmental disaster and*

¹ See Immigration and Nationality Act (INA) § 244(b)(3)(A-C), 8 U.S.C. § 1254a(b)(3)(A-C); see also Attachment A; Temporary Protected Status Legal Authority.

² See Designation of Nicaragua Under Temporary Protected Status, 64 FR 529 (Jan. 5, 1999).

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substantial disruption of living conditions caused by Hurricane Mitch, Nicaragua is unable, temporarily, to handle adequately the return of Nicaraguan nationals."

At the time, the Attorney General estimated that there would be no more than 45,000 to 70,000 nationals of Nicaragua in the United States who would be eligible for TPS.

Nicaragua's designation has been continuously extended since the 1999 designation, with the most recent extension announced on May 16, 2016.³

To be eligible for TPS under Nicaragua's designation, along with meeting the other eligibility requirements, individuals must have continuously resided in the United States since December 30, 1998, and have been continuously physically present in the United States since January 5, 1999. There are approximately 5,300 Nicaraguan TPS beneficiaries. Approximately 2,300 individuals re-registered for TPS under Nicaragua's last extension.⁴

Current Country Conditions

USCIS has conducted an in-depth review of conditions in Nicaragua. The country condition report, upon which USCIS' assessment and recommendation are based, can be found in Attachment B.

Hurricane Mitch killed over 3,000, and affected nearly 368,000 Nicaraguans. Landslides and floods destroyed villages and caused extensive damage to the country's infrastructure and agricultural sector.

Nicaragua received a significant amount of international aid to assist in its Hurricane Mitch-related recovery efforts, and many reconstruction projects have now been completed. Although Nicaragua reportedly continues to have one of the highest housing deficits in Central America, hundreds of homes destroyed by the storm have been rebuilt. The Second Land Administration Project covers 6 of the 15 Departments in the country and has helped over 430,000 people benefit from better property rights regulations. More than 67,000 families have received legal documents for their properties, of which more than 43,000 are new land titles.⁵ Significant aid was dedicated to repairing roads, and access to drinking water and sanitation has improved. Over 200 kilometers of roads have been constructed, benefitting around 460,000 people. More than 168,000 people have benefitted from access to reliable water supplies and sanitation services as a result of international aid-based projects.

The Second Educational Sector Support Project—an International Development Assistance (IDA) project—provided 1.4 million textbooks to 225,000 primary students of the poorest regions of the country, which represent 25 percent of the national enrollment in primary education.⁶ All 'afro-

³ See Extension of the Designation of Nicaragua for Temporary Protected Status, 81 FR 30325 (May 16, 2016).

⁴ The total number of beneficiaries represents all individuals who have been granted TPS since Nicaragua's designation in 1999 and who have not had their TPS withdrawn. Not all of these individuals continue to re-register because they have adjusted to another valid immigration status (e.g., over 1,600 have become lawful permanent residents or U.S. citizens), have left the United States, are no longer eligible for TPS, or have failed to re-register for other reasons. As a result, the number of beneficiaries that re-register for TPS under extensions is lower than the total number of beneficiaries.

⁵ World Bank, "World Bank in Nicaragua", available at: <http://www.worldbank.org/en/country/nicaragua/overview>

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descendant and indigenous primary students in the Caribbean Coast received textbooks in their native languages for the first time ever.

The Gross Domestic Product (GDP) in Nicaragua reached an all-time high of \$13.23 billion (USD) in 2016 and is expected to reach \$13.48 billion by the end of this quarter. Within a long-term context, the GDP in Nicaragua is projected to increase to about \$15.67 in 2020.⁷

Additionally, the World Bank reported that, despite global economic turbulence, Nicaragua has stood out for maintaining growth levels above the average for Latin America and the Caribbean as a result of disciplined macroeconomic policies, combined with a steady expansion of exports and foreign direct investment. Nicaragua ranks second among countries in Central America with favorable prospects for foreign direct investment and trade.⁸ In August 2017, the Nicaraguan government reported that 96 percent of the population was employed.⁹

Recovery from Hurricane Mitch has, however, been slow and encumbered by subsequent environmental challenges. A regional drought has recently impacted Nicaragua, causing crop losses, food insecurity, water shortages, and income loss in affected areas. By June of 2016, over 300,000 people were in need of food assistance. The 2017 growing season has demonstrated slightly improved conditions, allowing normal development of basic grain crops. Nicaragua has also been affected recently by a regional coffee rust epidemic, which has caused crop loss and declining coffee production throughout Central America since 2012, leading to job loss and food insecurity. Additionally, in recent years, Nicaragua has experienced an outbreak of thousands of cases of mosquito-borne illnesses, including chikungunya, dengue, and Zika.

In addition, in stark contrast to its neighbors to the north, Nicaragua also lacks high levels of crime and violence. Nicaragua's homicide rate declined to 7 homicides per 100,000 inhabitants in 2016, slightly higher than the worldwide average of 5.3 homicides per 100,000 inhabitants in 2015 (the most recent year available), and significantly lower than El Salvador's rate of 81.2 per 100,000 in 2016 and Honduras' rate of 59 per 100,000. There has been some significant, but isolated, violence along Nicaragua's Caribbean coast since 2015 relating to conflict over land between indigenous communities and settlers, and violence against women remains widespread. However, on the whole, crime rates are low, police are viewed positively and focus on preventing crime and violence, and transnational gangs and drug trafficking are largely absent from the country.

The U.S. Department of State does not have a current travel warning for Nicaragua, and the United Kingdom states that "most visits to Nicaragua are trouble free."

Finally, the U.S. Government works to repatriate individuals back to Nicaragua. During the Obama administration's second term alone, Immigration and Customs Enforcement (ICE) removed over 4,300 individuals to Nicaragua.¹⁰ The U.S. removed, on average, over 2,300 individuals to Nicaragua each year in FY2010-2012.

⁷ Trading Economics, "Nicaragua GDP", available at: <https://tradingeconomics.com/nicaragua/gdp>

⁸ World Bank, "World Bank in Nicaragua", available at: <http://www.worldbank.org/en/country/nicaragua/overview>

⁹ Alvarez Hidalgo, Wendy, *Crecimiento económico media piso en el rubro público*, La Prensa (NI), Aug. 4, 2017.

¹⁰ From 2010-2016, 4,311 individuals were removed to Nicaragua. This total is the cumulative number of removals found in the following reports: <https://www.ice.dhs.gov/sites/default/files/documents/Report2016/removals-2016.pdf>; <https://www.ice.dhs.gov/sites/default/files/documents/Report2016/2016RemovalStats.pdf>; <https://www.ice.dhs.gov/doclib/about/offices/ofo/pdf/2014-ice-immigration-removals.pdf>; <https://www.ice.dhs.gov/doclib/about/offices/ofo/pdf/2013-ice-immigration-removals.pdf>.

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Options1) *Extend Nicaragua's Designation for TPS*

Under the TPS statute, if you determine that the statutory conditions for TPS designation are met, then TPS designation will be extended for an additional period of 6 months, or in your discretion 12, or 18 months. Nicaragua was initially designated for TPS in 1999 as a result of the damage caused by Hurricane Mitch. The review of conditions in Nicaragua indicates that reconstruction and recovery efforts relating to the storm have largely been completed. Although subsequent environmental challenges hampered Nicaragua's recovery and development, Nicaragua's current challenges cannot be directly tied to destruction stemming from Hurricane Mitch. Therefore, USCIS assesses that, on balance, conditions in Nicaragua no longer support its TPS designation on the basis of Hurricane Mitch.

Although USCIS assesses otherwise, an argument could be made that the subsequent and, in some cases, ongoing environmental challenges – in particular, the prolonged, severe drought, coffee rust epidemic, and mosquito-borne disease outbreak – have sufficiently hindered recovery that a substantial disruption in living conditions endures. Under this assessment, Nicaragua continues to be unable to handle the return of its nationals, and extension is justified. USCIS is not aware of a request for extension of Nicaragua's TPS designation from the Government of Nicaragua.

From an operational perspective, extension periods of less than 18 months are challenging given the significant workload and timeframes involved in receiving and adjudicating re-registration applications and issuing new employment authorization documents. Additionally, the deliberative review process to support TPS decision making, including consultation with DOS, typically begins 10 months before the expiration date of a country's current designation. A 12- or 18-month extension of Nicaragua's designation for TPS would permit Nicaraguan TPS beneficiaries to re-register for TPS and remain in the United States with work authorization through January or July 5, 2019, respectively.

2) *Terminate Nicaragua's Designation for TPS*

If you determine that Nicaragua no longer continues to meet the statutory requirements for its TPS designation, you must terminate TPS for Nicaragua. Termination would end TPS benefits for existing Nicaraguan TPS beneficiaries. Upon the termination of TPS benefits, former beneficiaries without another immigration status or authorization to remain would no longer have permission to work and remain in the United States. They may, however, apply for any other immigration benefits for which they may be otherwise eligible (e.g., asylum, lawful permanent residence). As explained above, USCIS assesses that termination is warranted because recovery and reconstruction efforts relating to Hurricane Mitch have largely been completed and current challenges cannot be directly tied to damage from the storm.

If you decide to terminate Nicaragua's designation, you may determine the appropriate effective date of the termination. In doing so, you have the option to provide for an orderly transition period (e.g., 6, 12, or 18 months) after which TPS documentation will end. Delaying the effective

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date would provide those beneficiaries without any other immigration status a reasonable amount of time following the announcement of termination of the designation to plan and prepare for their departure from the United States, of particular importance for this population given the extended length of time Nicaraguan TPS beneficiaries have been living in the United States. Delaying the effective date would also allow Nicaragua time to prepare for and absorb its nationals in a more orderly fashion. Note: the effective date of termination may not be earlier than 60 days after the date the *Federal Register* notice announcing the termination is published or, if later, the expiration of the most recent previous extension.

3) Redesignate Nicaragua for TPS

In addition to making a decision to terminate or extend Nicaragua's TPS designation, you could also consider redesignating the country for TPS. A decision to redesignate a country for TPS, unlike termination or extension, is entirely at your discretion; if the statutory conditions are met, you may, but do not have to, redesignate a country for TPS. Nicaragua has experienced numerous environmental challenges in recent years, including hurricanes, tropical storms, floods, volcanic and seismic activity, drought, mosquito-borne illnesses, and a coffee rust epidemic that continue to pose challenges for Nicaragua. However, the scale and effects of these events do not appear to be on par with those that would typically support a country's designation for TPS. Additionally, Nicaragua is not experiencing the same high levels of violence and citizen insecurity as its northern neighbors. In light of these considerations, USCIS does not assess there to be a strong basis for redesignating Nicaragua for TPS.

4) No Decision/Automatic Extension

If you do not make a determination about whether Nicaragua's TPS designation should be extended or terminated at least 60 days prior to its expiration date, by statute, its period of designation will be automatically extended for 6 additional months (or, in your discretion, a period of 12 or 18 months). You could affirmatively choose not to make a decision about whether the conditions supporting Nicaragua's designation continue to be met and announce the automatic extension of 6 (or 12 or 18) months, noting that you or your successor will then review conditions prior to the expiration of that extension.

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Timeliness: You are required to provide timely notice of whether existing TPS designations will be extended or terminated through publication in the *Federal Register*.¹¹ Your earliest decision will facilitate publication of notice in the *Federal Register* sufficiently in advance of the January 5, 2018 expiration of Nicaragua's designation, providing predictability and clarity to beneficiaries and their employers. By statute, if you do not make a decision at least 60 days before the expiration of the current designation (i.e., by November 6, 2017), then Nicaragua's designation will automatically be extended for a minimum of 6 months.¹²

Recommendation: USCIS recommends that you terminate Nicaragua's designation for TPS with an effective date delayed by 6, 12, or 18 months to permit an orderly transition. This would permit current Nicaraguan TPS beneficiaries to continue to remain and work in the United States through July 5, 2018; January 5, 2019; or July 5, 2019, respectively.

Decision:

1. Extend: Extend Nicaragua's existing designation for (circle one):

6 months

12 months

18 months

Approve/date _____

2. Terminate: Terminate Nicaragua's designation with an orderly transition period of (circle one or specify period):

6 months

12 months

18 months

Other _____

Approve/date _____

3. Terminate and Redesignate: Terminate Nicaragua's existing designation and simultaneously redesignate Nicaragua:

Specify duration of redesignation (6-18 months): _____

Specify continuous residence date for eligibility under redesignation (currently December 30, 1998): _____

Approve/date _____

4. No Decision/Automatic Extension: Delay a decision on Nicaragua's designation, resulting in an extension of (circle one):

6 months

12 months

18 months

Approve/date _____

¹¹ See INA § 244(b)(3)(A).

¹² See INA § 244(b)(3)(A), (C).

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Attachments:

Attachment A: Temporary Protected Status Legal Authority

Attachment B: April 2017 USCIS RAIO Research Unit Report on Conditions in Nicaragua

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