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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N. W.
Washington, DC 20536

[redacted]

File: [redacted] Office: Texas Service Center Date: DEC 18 2003

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: Self-represented

INSTRUCTIONS:
This is the decision 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.

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 that 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 Citizenship and Immigration Services (CIS) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

for

Robert P. Wiemann, Director
Administrative Appeals Office

 [redacted]

DISCUSSION: The application was denied by the Director, Texas Service Center. The application is now before the Administrative Appeals Office on appeal. The case will be remanded for further consideration and action.

The applicant is a native and citizen of Honduras who indicated on his application that was admitted into the United States on July 14, 1991 as a visitor. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because she found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The director determined that the applicant had received his United States visa through unlawful means and, by using the visa to gain admission to the United States, the applicant had committed a crime involving moral turpitude.

The director stated in her decision that "a conviction of a crime involving moral turpitude is not required, only that the alien has committed, or committed acts which constitute the essential elements of a crime involving moral turpitude." However, the director's statement is not supported by the Immigration and Nationality Act. Section 212(a)(2)(A)(i)(I) of the Act, as quoted above, specifically requires a conviction, an admission of "having committed such crime", or the admission of "committing an act which constitutes the essential elements of such crime."

In this case, the record does not indicate that the applicant was ever charged with, or convicted of, a crime involving moral turpitude (CIMT). Additionally, the record does not reflect that the applicant ever admitted the commission of a CIMT or admitted the commission of an act which constitutes the essential elements of a CIMT. Therefore, the record does not support a finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

However, any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible. Section 212(a)(6)(C) of the Act.

Investigation conducted by the United States Embassy, [redacted] discovered that the non-immigrant visa used by the applicant to enter the United States had been fraudulently obtained. The applicant's use of a fraudulent visa to enter the United States renders him inadmissible under section 212(a)(6)(c) of the Act.

Inadmissibility under section 212(a)(6)(c) of the Act may be waived pursuant to section 244(c)(2)(ii) of the Act. Therefore, the case

will be remanded and the director shall offer the applicant an opportunity to apply for a waiver of grounds of excludability before a new decision is issued. In the event of a new decision of denial, the appeal will remain in effect and the case will be returned to the Administrative Appeals Office for review.

ORDER: The case is remanded for further consideration and action.