



U.S. Citizenship
and Immigration
Services

M-1

[REDACTED]

FILE:

[REDACTED]

Office: NEWARK DISTRICT

Date:

JUN 18 2004

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.

Ciuden M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The application was denied by the District Director, Newark, New Jersey, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a native and citizen of Liberia and is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The district director denied the TPS application because the applicant failed to establish that he was a national or citizen of Liberia.

On appeal, counsel asserts that the applicant is a national of Liberia and that evidence has been presented to support this assertion. Counsel further asserts that the applicant "never willfully intended to defraud the Court..." Counsel submits additional documentation in support of the appeal.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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.

Liberia was designated under section 244(b) of the Act on October 1, 2002, with extensions granted through October 1, 2004.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

8 C.F.R. § 244.9(a)(1) provides, in part:

Each application must be accompanied by evidence of the applicant's identity and nationality. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order may consist of :

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

The applicant indicated on his TPS application that he was a citizen of Liberia. The record of proceeding contains a Liberian passport, a Liberian National Identity Card, a copy of a Liberian birth certificate, and a copy of a Laissez Passer purportedly issued by the Liberian Consulate in New York City.

The district director determined that the applicant had failed to establish that he was a national of Liberia. The district director noted that the INS Forensic Document Laboratory (FDL) found that the applicant's passport had been "altered considerably." The FDL also found that the format of the National Identity Card submitted by the applicant did "not conform to specimens and reference materials provided by the issuing authority." Finally, the FDL found that the applicant's birth certificate was "modeled after the current issue Commonwealth of

Pennsylvania Certificate of Birth” and stated that the document was “produced by inkjet printer technology, contain[s] no security features and can be easily reproduced.”

The district director pointed out that the [REDACTED] submitted by the applicant listed his name as “Nimley” instead of “Nimely,” and there was no “Signature of Bearer” on the document, thus making it an unexecuted document. The district director also noted that the National Identity Card was purportedly issued on May 16, 1997, several years after the applicant’s claimed departure from Liberia in 1994. Finally, the district director further noted that the applicant’s birth certificate was not filed until November 2, 2001, more than 27 years after his claimed date of birth. The district director concluded that these flaws in the applicant’s documentation constituted “material misrepresentations of fact in [his] attempts to obtain immigrant benefits.” Therefore, the district director denied the application on May 15, 2003.

On appeal, counsel submits an affidavit from the applicant and an affidavit from the applicant’s sister. Counsel asserts that the applicant did not misrepresent any material fact and never intended to deceive the “Service” (now consisting of three components of the Department of Homeland Security). Counsel contends that the applicant is illiterate and relied on documents sent to him to establish his nationality and did not know they were not credible. Counsel further contends that since the applicant never received the originals of some of the documents in question and lacked the capacity to alter them himself, he should not be held responsible for their lack of credibility or fraudulent origin. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant, in his self-affidavit, states that he is a national of Liberia, that he arrived in the United States on June 14, 2001, and that he has been in detention continuously since that date at the Elizabeth Detention Center in Elizabeth, New Jersey.

The applicant’s sister, in her affidavit, states that she asked their uncle in Liberia to send the applicant’s birth certificate and passport to her, which she then sent to the applicant.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). The documents furnished to establish that the applicant is a national of Liberia were determined to have been altered. 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. It is incumbent upon 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 (BIA 1988). Although counsel and the applicant deny the applicant had any knowledge of the alterations and aver the applicant’s nationality as Liberian, both have failed to submit any evidence to overcome the findings of the director and the FDL or to explain the alterations. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it is determined that the applicant has failed to satisfactorily establish his eligibility as a TPS national. 8 C.F.R. § 244.2(a). Consequently, the district director’s decision to deny the application will be affirmed.

Beyond the decision of the district director, it is noted that additional grounds of inadmissibility have not been overcome by the applicant. The applicant entered the United States as a stowaway; any alien who is a stowaway is inadmissible under section 212(a)(6)(D) of the Act.

In addition, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act; this applies to aliens who, by fraud or willfully misrepresenting a material fact, seek to procure benefits under the Act. As detailed



above, the evidence of record reveals that the applicant submitted numerous identification documents that had been significantly altered. Insufficient evidence has been provided to overcome this ground of inadmissibility. Further, as the documentation presented by the applicant has been determined to be altered and/or otherwise insufficient to establish nationality, it is also determined that the applicant has failed to satisfactorily establish his identity.

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.