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U.S. Citizenship
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FILE: [REDACTED]
[WAC 01 203 53358]

Office: ST. PAUL

Date: OCT 27 2005

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:



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.

Cindy N. Gomez
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, St. Paul, Minnesota, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further consideration and action.

The applicant is a native and citizen of Somalia who 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 noted that the applicant indicated on his Form I-821, Application for Temporary Protected Status, and confirmed during his personal interview, that he entered the United States with a false passport. The district director, therefore, denied the application because the applicant was inadmissible to the United States under section 212(a)(6)(C)(i) of the Act as an alien who sought to procure admission into the United States by fraud.

On appeal, counsel contends that the district director “inappropriately” denied the application because inadmissibility under section 212(a)(6)(C)(i) of the Act may be waived under 8 C.F.R. § 244.3(b). Counsel states that the district director failed to advise the applicant of the procedure for applying for a waiver of grounds of inadmissibility on Form I-601, Application for Waiver of Grounds of Excludability.

The record indicates that the applicant applied for admission to the United States at Miami, Florida, on December 19, 2000, using a fraudulent Kenyan passport. In a hearing before an Immigration Judge on February 7, 2001, he requested political asylum. His request was denied on January 14, 2002, and the applicant was ordered to be removed from the United States. His appeal from the denial of his asylum application was summarily dismissed by the Board of Immigration Appeals (BIA) on December 19, 2002. On August 24, 2004, new counsel for the applicant filed a motion to reopen the matter with the BIA. The BIA dismissed the motion on November 15, 2004, because it was not timely filed.

The applicant filed the current Form I-821 on September 29, 2003. As stated previously, the director determined that the applicant was ineligible for TPS because he was inadmissible to the United States under section 212(a)(6)(C)(i) of the Act as an alien who sought to procure admission into the United States by fraud.

Under 8 C.F.R. § 244.3(b), an alien who is inadmissible on grounds that may be waived, including the ground identified under section 212(a)(6)(C)(i) of the Act, must be advised of the procedures for applying for a waiver of grounds of inadmissibility on Form I-601, Application for Waiver of Ground of Excludability. Further, that waiver application must be properly filed and approved before eligibility for TPS can be considered.

Pursuant to 8 C.F.R. § 244.3(b):

Except as provided in paragraph (c) of this section, the Service may waive any other provision of section 212(a) of the Act in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is inadmissible on grounds which may be waived as set forth in this paragraph, he or she shall be advised of the procedures for applying for a waiver of grounds of inadmissibility on Form I-601 (Application for waiver of grounds of excludability).

In this case, the district director failed to provide the applicant with an opportunity to file a Form I-601. Therefore, the district director shall provide the applicant with an opportunity to submit a Form I-601, and shall also allow the applicant to submit sufficient evidence to otherwise establish eligibility. It is noted that the applicant has not provided any evidence of continuous residence and continuous physical presence in the United States since September 4, 2001. The applicant also has not provided any evidence of his identity or nationality.

Beyond the decision of the director, it is noted that the initial registration period for Somalians was from September 7, 2001 to September 17, 2002. Subsequent extensions of the TPS designation for Somalia have been granted, with the latest valid until September 17, 2006, upon the applicant's re-registration during the requisite time period. The applicant did not file his Form I-821 until September 29, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (CIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

Counsel asserts that the applicant is eligible for late registration because he has an application for asylum and withholding of removal pending before CIS. However, as previously stated, the applicant's appeal from the denial of his request for asylum and withholding of removal was dismissed by the BIA on December 19, 2002. Further, the applicant's motion to reopen the matter was not filed with the BIA until August 16, 2004. As previously stated, the BIA dismissed the motion on November 15, 2004, because it was not timely filed.

In order to qualify for late initial registration based on a pending application for asylum or for withholding of removal, the applicant was required to file his Form I-821 within 60 days of December 19, 2002, the date his appeal was dismissed by the BIA. In this case, the applicant should have filed his application on or before February 17, 2003. He did not file his TPS application until September 29, 2003. The applicant cannot qualify for late initial registration based on a pending application for asylum or for withholding of removal. The applicant has not provided any establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Therefore, the applicant also may be ineligible under the late registration provisions of TPS.

Accordingly, the matter is remanded for action consistent with the foregoing. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The matter is remanded for further consideration and action.