



U.S. Citizenship
and Immigration
Services

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JUL 25 2007

FILE:

[REDACTED]

Office: MINNEAPOLIS

Date:

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Minneapolis, Minnesota, and 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 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 director found that during her interview, the applicant stated that she entered the United States on July 1, 1999, with a fake passport. The director determined that the applicant was ineligible for TPS under 8 C.F.R. § 244.3(b) because she is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act as an alien who sought to procure admission to the United States or an immigration benefit through fraud or the willful misrepresentation of a material fact.

On appeal, counsel states:

██████████ is from the country of Somalia in Africa. ██████████ is fearful that if she is sent back to Somalia before a central and functioning government is established, she will be persecuted. Presently TPS is available to Somali residents who are in the U.S. and have U.S. immigration issues.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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.

The Director of the Arlington Asylum Office of Citizenship and Immigration Services, (formerly, the Immigration and Naturalization Service) issued a Referral Notice on August 26, 1999 recommending that the applicant's asylum application be denied and referring her case to an Immigration Judge (IJ). In removal proceedings held on May 3, 2001, an Immigration Judge in Baltimore, Maryland, denied the applicant's asylum application and granted her application for withholding of removal. The IJ's order provided that the applicant is permitted to remain in this country until such time as conditions improve in Somalia. On January 6, 2003, the Board of Immigration Appeals in Falls Church, Virginia, considered the applicant's appeal and administratively closed her removal proceedings. In the Board's decision, it was noted that the Attorney General had redesignated Somalia under the TPS program and that the applicant might be eligible for late initial registration for TPS. It is noted that the applicant is eligible for late initial registration for TPS because the IJ granted her application for withholding of removal on May 3, 2001, and that the current TPS expiration dated for Somalia is March 17, 2008.

As stated above, the director found that during her interview, the applicant stated that she entered the United States on July 1, 1999, with a fake passport and determined that she is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act. However, this ground of inadmissibility may be waived. If an alien is inadmissible on grounds which may be waived for the TPS program, he or she shall be advised of the procedure for applying for a waiver of grounds of inadmissibility on Form I-601, Application for Waiver of Ground of Excludability. The record does not reflect that the applicant filed and that the director adjudicated a Form I-601 prior to issuing a determination. Nor does the record show that the director advised the applicant that such a waiver was available as required by regulation. 8 C.F.R. § 244.3(b).

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements cited above and is otherwise eligible under the provisions of section 244 of the Act.

ORDER: The District Director's decision is withdrawn and the application is remanded for a new decision.