



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: PHILADELPHIA

Date: AUG 17 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:
[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.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Temporary Protected Status (TPS) application was denied by the District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed as moot, because the designated period of TPS for Liberia terminated on August 25, 2004.

The applicant is a native and citizen of Liberia who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, for the registration period ending October 1, 2004.

The district director denied the TPS application after determining that the applicant was inadmissible to the United States pursuant to section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C).

On appeal, counsel submits a statement and additional evidence.

On August 25, 2004, the Department of Homeland Security announced the termination of prior designations and the re-designation of TPS for nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia). As the designation period for which the applicant requests TPS has passed, approval of the application at this time would serve no practical effect since any decision rendered by the AAO would be subsequent to the date of the termination date of the authorized period. Accordingly, the appeal is summarily dismissed.

It is noted that the record shows that the applicant was admitted to the United States on June 7, 1995, as a B-2, nonimmigrant visitor, and was authorized to remain in the United States until December 5, 1995. She subsequently filed a Form I-589, Application for Asylum and Withholding of Deportation, on July 14, 1995. The Form I-589 was denied on October 20, 1995. An Order to Show Cause and Notice of Hearing was issued on May 22, 1996, at Philadelphia, Pennsylvania. In removal proceedings held on January 16, 1998, the immigration judge granted the applicant voluntary departure until February 17, 1998, with an alternate order of deportation to Liberia.

On February 9, 1998, the applicant married [REDACTED] a citizen of the United States. A Form I-130, Petition for Alien Relative, was filed by [REDACTED] on August 18, 1998, on behalf of the applicant. Because the marriage creating the relationship occurred on or after November 10, 1986, and while the alien was in exclusion, deportation, or removal proceedings, as provided in sections 204(g) and 245(e) of the Act, and the related regulations at 8 C.F.R. § 204(a)(1)(iii) and § 245.1(c)(9), the petitioner [REDACTED] was requested on September 23, 1998, and on January 19, 1999, to provide clear and convincing evidence that his marriage to the beneficiary (the applicant) was entered into in good faith and not for the purpose of procuring the applicant's entry as an immigrant.

Section 204(g) of the Act states, in part:

A petition may not be approved to grant an alien immediate relative status or preference status by reason of a marriage which was entered into during the period described in section 245(e)(2), until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

An alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) [the period during which administrative or judicial proceedings are pending

regarding the alien's right to be admitted or remain in the United States] may not have his or her status adjusted under subsection (a). Section 245(e)(1) of the Act.

The two-year requirement of foreign residence does not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the Attorney General that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant. Section 245(e)(3) of the Act.

The Vermont Service Center director determined that the documents furnished by the petitioner in response to requests for evidence were insufficient to establish that a bona fide marriage existed. The director concluded that the evidence of record did not establish that the petitioner's marriage to the applicant was entered into in good faith and not solely for the purpose of obtaining permanent resident status for the applicant. The Service Center director, therefore, denied the Form I-130 petition on July 16, 1999.

The petitioner appealed the director's decision to the Board of Immigration Appeals (BIA). The BIA reviewed the evidence of record and found that the record supported the denial of the visa petition. The BIA, therefore, concurred with the determination of the Service Center director, concluded that the petitioner failed to establish that his marriage to the beneficiary [the applicant] was valid for immigration purposes, and dismissed the appeal on June 4, 2001.

Section 212(a)(6)(C)(i) of the Act states, in pertinent part:

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 244(c)(2)(A)(ii) of the Act states, in pertinent part:

[E]xcept as provided in clause (iii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest...

In a notice of intent to deny the TPS application regarding the request for additional evidence dated January 7, 2003, the Philadelphia district director noted that a Form I-130 petition was previously denied based on the finding that the applicant's marriage to [REDACTED] was entered into for the sole purpose of procuring her entry as an immigrant. The district director further noted that the BIA also concluded that the applicant's marriage to [REDACTED] was not valid for immigration purposes. The district director, therefore, determined that the applicant was ineligible for TPS because she was inadmissible to the United States pursuant to section 212(a)(6)(C) of the Act. He advised the applicant that certain grounds of inadmissibility may be waived, and he granted the applicant 30 days in which to file a Form I-601, Application for Waiver of Grounds of Inadmissibility.

The applicant failed to submit a Form I-601 waiver application. Therefore, the director concluded that the applicant was inadmissible to the United States pursuant to section 212(a)(6)(C) of the Act and denied the TPS application on March 6, 2003.

On appeal, counsel asserts that the applicant did not file a Form I-601 waiver because she does not believe that she is subject to the ground of inadmissibility under section 212(a)(6)(C) of the Act. Counsel states that the

Service Center's decision regarding the Form I-130 and that the petitioner failed to meet his burden of proof under the clear and convincing standard that their marriage was bona fide, are much less serious findings. He adds that if the Service Center director had wanted to deny the relative petition based on section 212(a)(6)(C) of the Act, he would have chosen to do so; however, the director chose to deny the petition based on section 204(g). Counsel further states that the follow-on decision of the BIA also is not based upon a finding of marriage fraud under section 212(a)(6)(C), but rather, only affirms the Service Center director's finding.

Counsel asserts that a new Form I-130 was filed by [REDACTED] on behalf of his wife (the applicant), and that this petition was approved and the petitioner received a priority date of March 5, 2001. To establish this assertion, he submits a copy of Form I-797, Notice of Action, dated July 30, 2001, indicating that the Form I-130 petition had been approved. Counsel contends that CIS' decision to approve the Form I-130 petition is additional proof that the marriage was entered into in good faith, is a bona fide marriage, and was not entered into for the sole purpose of procuring the applicant's entry as an immigrant. He requests that the applicant be granted TPS without requiring her to file a Form I-601 waiver.

It is noted that an "X" has been placed through the second Form I-130 approval stamp dated June 30, 2001, with no further indication as to why the approval stamp is marked with such an annotation. A copy of the BIA decision dated June 4, 2001, is also included in that section of the record. It is also noted, however, that this BIA decision pertains to the initial Form I-130 denial, with a different set of circumstances involved.

Counsel is correct in his assertions. The record shows that the Form I-130 relative petition was clearly denied based on section 204(g) of the Act. It is noted that neither the Service Center director nor the BIA found that the applicant fell under the provisions of section 204(c) of the Act. This section states that no petition shall be approved if the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws. A denial of a Form I-130 under section 204(c) of the Act would render the applicant inadmissible to the United States pursuant to section 212(a)(6)(C) of the Act. The 204(g) provision pertains to the "clear and convincing" standard that was determined to not have been met with the filing of the first petition. The applicant does not fall under these provisions.

ORDER: The appeal is summarily dismissed. The denial of this application is without prejudice to any subsequent application filed by this person, during the new registration period, under the new re-designation.