



U.S. Citizenship
and Immigration
Services

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invasion of personal privacy

[REDACTED]

MA

FILE: [REDACTED]

Office: ST. PAUL

Date: JAN 05 2007

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, 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 stated under oath in a TPS interview conducted on July 16, 2004, that he entered the United States with a false Kenyan 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, the applicant states that he is eligible for late registration.

The record indicates that the applicant applied for admission to the United States at Miami, Florida, on November 7, 2000, using a fraudulent Kenyan passport. The applicant subsequently applied for political asylum in the United States.

On August 7, 2002, an Immigration Judge found the applicant inadmissible to the United States under sections 212(a)(6)(c)(i) and 212(a)(7)(A)(i) of the Immigration and Nationality Act (INA), as amended. The Immigration Judge also denied the applicant's requests for asylum, withholding of removal, and relief under the United Nations Convention Against Torture, and ordered the applicant removed to Somalia.

The applicant subsequently filed an appeal of the Immigration Judge's decision before the Board of Immigration Appeals (BIA). The BIA determined "it appears from the record that [the applicant] ... is a Somalian who is eligible to apply for late registration for TPS," and administratively closed the proceedings on December 30, 2003.

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.

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.