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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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FILE:

Office: NEB RASKA SERVICE CENTER

Date:
APR 04 2011

IN RE: Applicant:

APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Nebraska Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the California Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a citizen of [REDACTED] 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 denied the application because the applicant failed to submit the required Form I-601, Application for Waiver of Grounds of Inadmissibility, due to her inadmissibility under section 212(a)(6)(C)(i) of the Act.

On appeal, the applicant does not address the basis for the denial of her application or provide the requested Form I-601. The applicant submits additional documentation in an attempt to establish continuous physical presence in the United States.

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 as designated by the Attorney General, now the Secretary, Department of Homeland Security (Secretary), 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 Secretary 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.

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 212(a)(6)(C)(i) of the Act.

Except as provided in clause (iii), the Secretary 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. Section 244(c)(2)(A)(ii) of the Act.

If an alien is admissible on grounds which may be waived, he or she shall be advised of the procedures for applying for a waiver of grounds of inadmissibility on Form I-601. 8 C.F.R. § 244.3(b)

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reflects that on June 30, 1993, the applicant applied for admission into the United States by presenting a fraudulent [REDACTED] passport. The applicant is, therefore, inadmissible under section 212(a)(6)(C)(i) of the Act. As noted above, such ground of inadmissibility may be waived.

On June 14, 2010, the applicant was provided the opportunity to file a Form I-601 with appropriate fee or fee waiver request. The applicant, however, failed to submit the waiver application.

To date, the applicant has not filed the required Form I-601. Therefore the applicant remains inadmissible. Consequently, the director's decision to deny the application for TPS on this issue will be affirmed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

On June 14, 2010, the applicant was also requested to submit evidence to establish her continuous physical presence in the United States since January 21, 2010. In response, the applicant submitted:

- A copy of her daughter's birth certificate and social security card.
- A copy of her [REDACTED] license that expired on March 31, 2007.
- A copy of her social security card.
- A copy of a lease contract entered into on January 15, 2010.
- A copy of her employment authorization card.

On appeal, the applicant submits copies of documents that were previously provided along with:

- A lease contract entered into on December 27, 2008.
- A copy of her birth certificate with English translation.
- A rental agreement renewal signed July 5, 2008.
- A copy of the biographical page of her [REDACTED] passport issued on April 4, 2010.
- A bill from [REDACTED] dated May 25, 2006.
- Medical documents dated October 12, 2006 and January 9, 2009.
- An electric bill from [REDACTED] for services from November 3, 2009 to December 4, 2009.

The electric bill only serves to establish the applicant's residence and physical presence in the United States until December 4, 2009; there is a significant period of time from December 5, 2009 to the date the lease agreement was entered into that has not been established. None of the

documents submitted establishes the applicant's continuous residence since January 12, 2010, and her continuous physical presence since January 21, 2010. It is unclear why the applicant would submit utility statements in 2006 and 2009, but not documentation during 2010.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence or continuous physical presence in the United States during the requisite periods. She has, thereby, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the TPS application must be denied on this basis as well.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal. An alien applying for TPS 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.

Finally, while not the basis for the dismissal of the appeal, it is noted that an exclusion hearing was held on August 10, 1994, and the applicant was ordered excluded and deported from the United States. The applicant appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). On March 20, 1995, the BIA summarily dismissed the appeal.

ORDER: The appeal is dismissed.