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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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DATE: **MAR 13 2012**

Office: VERMONT SERVICE CENTER

FILE:

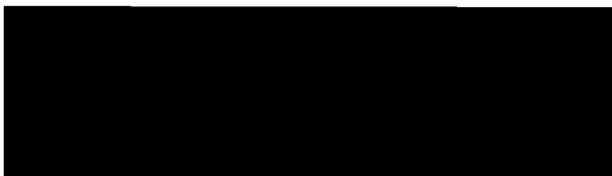


IN RE: Applicant:



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

ON BEHALF OF APPLICANT:

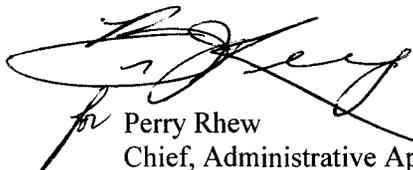


INSTRUCTIONS:

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 Vermont 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 Vermont 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and action.

The applicant is a native and citizen of Honduras who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director withdrew TPS because it was determined that the applicant had knowingly submitted false information in order to obtain immigration benefits.

On appeal, counsel states that the applicant did not commit fraud as "he did not knowingly submit false information in order to obtain an immigration benefit." Counsel asserts that the applicant did not realize that the birth certificate previously presented had an incorrect birth date.

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 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.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by U.S. Citizenship and Immigration Services (USCIS). 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 or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(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 at the time the applicant filed his initial TPS application on June 25, 1999, he presented a birth certificate with a date of birth of August 10, 1979. In an affidavit notarized February 7, 2011, the applicant asserted that upon renewal of his passport in 2004, he discovered that the date of birth listed was incorrect. The applicant asserted in 2009, he submitted a request to USCIS to correct the date of birth, but it was denied due to lack of evidence.

On February 18, 2011, the applicant submitted a Form I-765, Application for Employment Authorization, his new birth certificate and passport and requested that his date of birth be corrected to reflect May 15, 1975.

On March 30, 2011, the director issued a notice which informed the applicant that the discrepancies in the dates of birth must be explained. The applicant was requested to submit an original certification from the Honduras Registrars Office corroborating his claim that he was given an incorrect birth certificate. The applicant was also requested to submit an original birth certificate. The applicant, in response, provided the following:

- Original birth certificates with dates of birth of August 10, 1979, and May 15, 1975, with English translations.
- A certified certificate from the Civil Official of the Department of Intibuca, National Registry of Persons in Honduras, who indicated that both birth certificates had been reviewed and the current birth certificate (May 15, 1975) is to be considered valid as the initial birth certificate (August 10, 1979) contained erroneous information.

The director, in his decision, noted that the documents submitted appeared to be valid. The director, however, determined that inconsistencies between the year the applicant discovered the error and USCIS' records remained unresolved. Specifically, the director indicated:

In your affidavit, you have indicated that you discovered that your date of birth was incorrect when you attempted to renew your passport in 2004. You then instructed your mother in Honduras to request for a new birth certificate on your behalf. You added that it was only after your mother have obtained your new birth certificate that you discovered your correct date of birth of May 15, 1975.

USCIS has obtained a copy of your New Jersey drivers license [REDACTED] which was filed by you on August 17, 1998, (six years before the year you allegedly discovered the error) with the Department of Motor Vehicles in the State of New Jersey. That drivers license shows your date of birth as May 15, 1975. USCIS' record also revealed that you were ordered deported by an Immigration Judge on June 15, 1994, under the same date of birth of May 15, 1975. On June 25, 1999, you filed an Application for Temporary Protected Status (Form I-821) [REDACTED] and failed to disclose the Immigration Judge order and used a different date of birth to prevent the discovery of the latter; a material fact you have withheld.

The record reflects that at the time of the applicant's apprehension on August 23, 1993, he was assigned alien registration number [REDACTED]. The documents contained in that record list his name and date of birth as [REDACTED] born May 15, 1977. The parents' names listed on the Form I-213, Record of Deportable Alien, and Form I-217, Information for Travel Document or Passport, are identical to the parents' names listed on the new birth certificate.

The director, in withdrawing TPS on July 27, 2011, concluded that the evidence of record indicates that the applicant had knowingly submitted false information in order to obtain immigration benefits.

On appeal, counsel submits an affidavit from the applicant who asserts that he was unaware of a final order of deportation in 1994¹; he has always stated (when asked) that his date of birth is May 15, 1975; at the time of his 1993 apprehension, he informed the translator that his date of birth was May 15, 1975; and he informed the individual who filled out the paperwork for his driver's license in New Jersey in 1998, of his date of birth. The applicant asserts, in pertinent part:

The point is that I did not have in my possession a birth certificate or a passport. Then in 1999 I had to file my TPS and had to request that my family send a birth certificate to me. If I had a birth certificate prior to 1999 I would have sent it rather than request one from Honduras (which then turns out to be incorrect). I do not believe I committed an intentional fraud on the government. I was unaware that the birth certificate was incorrect until I went to renew my passport.

The applicant has provided a plausible explanation for the inconsistencies outlined by the director in his decision. Therefore, the findings of the director on this ground will be withdrawn.

Counsel, on appeal, indicates that the director failed to afford the applicant an opportunity to file a Form I-601, Application for Waiver of Grounds of Excludability. Therefore, the case will be remanded in order for the director to determine if the evidence submitted warrants the filing of the Form I-601. The director may request any additional evidence that he considers pertinent to assist with the determination of the applicant's eligibility for TPS. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

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 case is remanded for appropriate action consistent with the above discussion and entry of a new decision.

¹ The Order was issued *in absentia*.