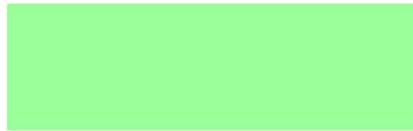




U.S. Citizenship
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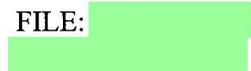


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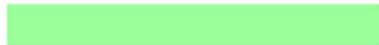
Office: NEBRASKA SERVICE CENTER

FILE:



IN RE:

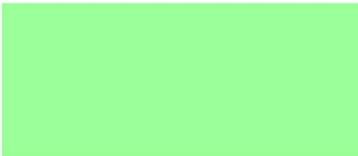
Applicant:



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 California 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 Haiti 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 the applicant to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. The director denied the application because the applicant failed to submit the required Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, counsel argues that there is no substantial and probative evidence that the applicant had entered into a sham marriage for the purpose of evading the U.S. immigration laws.

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 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 on June 23, 2006, a Form I-130, Petition for Alien Relative, was filed on the applicant's behalf by her husband (the petitioner). The petitioner and the applicant were interviewed on December 13, 2006 and September 13, 2007. On November 12, 2008, a Notice of Intent to Deny was sent to the petitioner, advising him that a review of the documents submitted, along with his and the applicant's testimonies at each interview did not prove that the petitioner and the applicant were indeed in a bona fide marriage. On September 13, 2007, the petitioner and the applicant were interviewed separately. The notice of November 12, 2008, outlined the questions that were asked by the interviewing officer and the inconsistent answers given by the petitioner and the applicant at their second interview. The petitioner was afforded 60 days to submit a rebuttal or evidence to the notice. On April 30, 2009, the District Director, Baltimore, Maryland denied the Form I-130 as the petitioner failed to respond to the notice of November 12, 2008 and concluded that the petitioner and the applicant had engaged in a sham marriage in order to circumvent the immigration laws of the United States. No motion was filed from the denial of this petition.

The applicant filed her initial TPS application on February 19, 2010. On March 29, 2011, the applicant was requested to submit a Form I-601 as she had been found to be inadmissible under 212(a)(6)(C)(i) of the Act due to her fraudulent marriage to a U.S. citizen for the purpose of gaining an immigration benefit. The applicant, however, failed to submit the requested form. The applicant through her counsel submitted a letter indicating that she did not enter into a sham marriage and that the Form I-130 had been denied in error. An affidavit from the applicant was also submitted indicating that she did not have to file a Form I-601 as her marriage to her husband was not a sham. On May 24, 2011, the director determined that the evidence failed to show, by a simple preponderance that the applicant was eligible for TPS. The director denied that application as the applicant failed to file the requested Form I-601.

It is noted that in response to the notice of November 12, 2008, counsel also indicated, in part, "[t]he record contains neither a transcript nor interview notes reflecting the questions asked and the answers given in order to prove the fraud charge on this case." Contrary to counsel's assertion, the record does contain recordings of the testimonies of the petitioner and of the applicant conducted on September 13, 2007.

The applicant filed the current TPS application on July 28, 2011. On October 3, 2011, a Request for Evidence was issued and once again the applicant was advised that she had been found to be inadmissible under 212(a)(6)(C)(i) of the Act due to her fraudulent marriage to a U.S. citizen for the sole purpose of gaining an immigration benefit. The applicant was requested to file a Form I-601. The director noted, "[t]he Form I-130 denial was not legally challenged at the time of the

denial; and therefore, stands for future adjudications.” Counsel, in response, requested additional time to obtain the necessary documents in support of the applicant’s Form I-601.

The director, in denying the current TPS application, denied counsel’s request for additional time. The director determined that as the initial TPS application had been denied for failure to file the Form I-601, the applicant had been aware that the Form I-601 would be required. The director noted that only a Form I-601, the proper fee and an explanation is required for the ground (212(a)(6)(C)(i)) that is being waived for TPS.

On appeal, counsel states that a Form I-601 was improperly requested as the director ignored “all the regulations, precedent and controlling case law and wrongfully concluded that [the applicant] engaged in a sham marriage. Counsel however, does not cite the regulations, precedent and controlling case law to support his assertion.

The record clearly reflects that based upon the documentation presented and the testimonies of the applicant and her petitioning husband at the time of their interviews, the district director determined that the applicant’s marriage was a sham. The petitioner had the opportunity to rebut the district director’s findings first, in response to the notice of intent to deny, and second, on motion from the notice denying the Form I-130. On each occasion, the petitioner failed to respond. The AAO is not the proper forum for collaterally attacking the decision of the district director.¹

The applicant is inadmissible to the United States, pursuant to section 212(a)(6)(C)(i) of the Act. To date, the required Form I-601 has not been filed by the applicant. Therefore the applicant remains inadmissible. Consequently, the director's decision to deny the application for TPS on this issue will be affirmed.

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.

ORDER: The appeal is dismissed.

¹ The AAO has no jurisdiction to review denials of petitions for alien relative under section 201(b) of the Act.