U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34797001

Date: NOV. 21, 2024

Motion on Administrative Appeals Office Decision

Form I-821, Application for Temporary Protected Status

The Applicant, a national of Somalia, seeks Temporary Protected Status under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a.

The Director of the Vermont Service Center denied the TPS application, concluding that the record did not establish that she met the continuous residence and physical presence requirements under the TPS designation for Somalia. We dismissed a subsequent appeal. The matter is now before us on motion to reconsider.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Applicant contests the correctness of our decision and reasserts that the dismissal misinterpreted the meaning of continuous residence. She also maintains that she was never admitted into Canada and thus never departed the United States. Alternatively, she posits that if she did depart the United States, she meets the "brief, casual and innocent" exception to the physical presence requirement.

In our prior decision, which we incorporate here, we determined that the Applicant's departure did not meet the "brief, casual and innocent" exception regardless of whether it was short and not contrary to law because she executed the prior deportation order. *See* section 101(g) of the Act, 8 U.S.C. 1101(g) (providing in pertinent part that "any [noncitizen] ordered deported . . . who has left the United States, shall be considered to have been deported in pursuance of law, irrespective of the source from which the expenses of his transportation were defrayed or of the place to which he departed.").

In reiterating that we erred in interpreting continuous residence, the Applicant relies on the documents submitted in the initial TPS application and on appeal to demonstrate that she resided in the United States from January 11, 2023, as required for Somalian TPS. However, our prior decision determined that the Applicant's departure broke the continuous residence requirement. The arguments on motion that restate the definition of "reside" do not overcome our determination that the Applicant does not meet the "brief, casual and innocent" exception.

The contentions in the motion to reconsider are substantially similar to the facts and issues we have already considered in our previous decision. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision").

To explain that she did not depart the United States, the Applicant relies on *Matter of T-*, 6 I&N Dec. 638 (BIA 1955) and asserts that there is a legal distinction between a physical and a legal departure. But she offers no new analysis to explain that our prior decision was based on an incorrect application of law regarding the legal departure and how the Applicant's departure is analogous to a physical departure only. She also contends that determining whether an applicant is subject to removability or is an applicant for admission upon entering the United States is not relevant to the TPS application. However, in the absence of probative evidence to support a conclusion that the Applicant was denied entry into Canada, the determination at the time of entry is important.

In *United States v. Ambriz-Ambriz*, 586 F.3d 719 (9th Cir. 2009), the noncitizen was denied entry into Canada, forced to return to the United States and was found in the United States. In the instant matter, the record lacks evidence that the Applicant was denied entry into Canada. Unlike in *Ambriz-Ambriz*, the Applicant here was transported to a shelter in Canada where she remained for a few weeks. While we acknowledge the difficulty in obtaining evidence to demonstrate there was no legal admission into Canada, this lack of information combined with the determination made at the port of entry of being an applicant for admission, supports the conclusion that she departed the United States.

As indicated in our prior decision, the Applicant departed the United States under an order of removal during the continuous residence period, therefore the absence cannot meet the "brief, casual and innocent" exception. *See* 8 C.F.R. section 244.1(2).

On motion to reconsider, the Applicant has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.