



U.S. Citizenship  
and Immigration  
Services



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FILE:



Office: ST. PAUL

Date:

NOV 19 2004

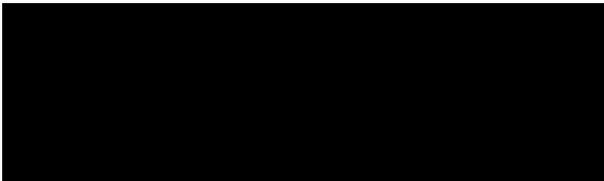
IN RE:

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:



PUBLIC COPY

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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, St. Paul, Minnesota, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, who claims to be a native and citizen of Somalia, is applying for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254. The District Director denied the application after determining that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act.

On appeal, counsel reasserts the applicant's claim of eligibility for TPS. Counsel asserts that the applicant did not make any false statements when he attempted to enter the United States and, therefore, was not inadmissible under section 212(a)(6)(C) of the Act. Counsel also points out that a waiver was available for the ground of inadmissibility cited by the District Director, but asserts that the applicant was never advised of the availability of this waiver.

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) of the Act.

The applicant admits that he attempted to enter the United States with a fraudulent passport in December 1998. Although counsel is correct in her assertion that this ground of inadmissibility may be waived, the record of proceeding does not indicate that the applicant has filed a Form I-601, Application for Waiver of Ground of Excludability, with the proper filing fee. Therefore, the applicant remains inadmissible under section 212(a)(6)(C) of the Act and the District Director's decision to deny the application will be affirmed.

Furthermore, although the issue was not raised by the District Director, the record of proceeding indicates that the applicant was firmly resettled in a third country after he claimed to have departed Somalia and before he attempted to enter the United States. An alien shall not be eligible for TPS if the Attorney General finds that the alien was firmly resettled in another country prior to arriving in the United States. Sections 244(c)(2)(B)(ii) and 208(b)(2)(A)(vi) of the Act.

As defined in 8 C.F.R. § 208.15, an alien is considered to be firmly resettled if, prior to arrival in the United States, he or she entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement unless he or she establishes:

- (a) That his or her entry into that country was a necessary consequence of his or her flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that country; or
- (b) That the conditions of his or her residence in that country were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled. In making his or her determination, the asylum officer or immigration judge shall consider the conditions under which other residents of the country live; the type of housing, whether permanent or temporary, made available to the refugee; the types and extent of

employment available to the refugee; and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation that includes a right of entry or reentry, education, public relief, or naturalization, ordinarily available to others resident in the country.

In a sworn statement that was executed on December 4, 1998, the applicant testified that he left Somalia, traveled to Mozambique, and then to South Africa where he was granted political asylum. The applicant further stated that he left South Africa because he did not receive any government benefits there and explained that he traveled through Brazil and Belize before attempting to enter the United States.

The applicant completed a Form I-589, Application for Asylum, on February 25, 1999.<sup>1</sup> The applicant stated on page 2 of his application that before entering the United States he lived in Somalia until August 1997, and in South Africa from August 1997 through December 1998. On page 6 of his application, the applicant stated that he "left Somalia on July 15, 1997" and traveled through Mozambique to South Africa. However, in a supplement to his Application for Asylum, which was completed by the applicant on May 14, 2001, the applicant stated that he left Somalia in 1991 and spent "a great deal of time" in Kenya. He stated that he was married in Kenya in 1994 and stayed there as a refugee until May 1997. The applicant stated that he then left Kenya and traveled to Mozambique where he purchased refugee papers and continued on to South Africa. When he discovered that he would not be granted government health benefits in South Africa, the applicant stated that he then traveled on to the United States.

The applicant has submitted a photocopy of a letter dated January 29, 1998, from the Republic of South Africa, Department of Home Affairs, which notified the applicant that his application for asylum had been approved. The applicant also was issued a "Certificate of Exemption" which was valid until January 2000, and was notified that this certificate could be extended.

The applicant lived as a refugee in Kenya from 1991 to 1997. There is no indication that the applicant's refugee status in Kenya was retracted by the government there. Rather, the applicant left Kenya and traveled to South Africa. It appears that, although the applicant was granted political asylum in South Africa from 1998 through 2000, he chose to leave that country in late 1999 in order to come to the United States. Although the applicant's asylum status in South Africa has since lapsed, this expiration was the result of the applicant's willful abandonment of his granted status in South Africa, and not the result of the South African government's rescission of such status while he remained in that country.

The applicant was granted refugee status in Kenya and asylum status in South Africa. However, in both cases the applicant chose to abandon that status for personal reasons. It is determined that the applicant may have been firmly resettled in Kenya, and was firmly resettled in South Africa before attempting to enter the United States. Therefore, the application also may not be approved for this reason.

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<sup>1</sup> The asylum application and withholding of removal to Somalia request were denied by the Immigration Judge, Miami, Florida, based on a finding, in part, that the applicant had firmly resettled in South Africa, and had been granted refugee status in Kenya.

Finally, the applicant has failed to provide any evidence to support his claim of Somalian citizenship. Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2(a), provide that an applicant is eligible for TPS only if such alien establishes that he is a national of a foreign state designated under section 244(b) of the Act. The applicant has failed to provide any documentation to corroborate his claim of Somalian citizenship; consequently, the application may also not be approved for this reason.

An alien applying for TPS has the burden of proving that 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.