



U.S. Citizenship
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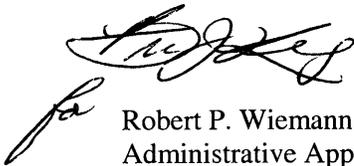
IN RE: Applicant: 

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:

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, Director
Administrative Appeals Office

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

The applicant claims to be a native and citizen of Somalia who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The acting district director denied the application because the “application for TPS was not timely filed.”

On appeal, the applicant submits a statement.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under § 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or
 - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of condition described in paragraph (f)(2) of this section.

The term *continuously resided*, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The term *continuously physically present*, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

Persons applying for TPS offered to Somalians must demonstrate continuous residence and continuous physical presence in the United States since September 4, 2001. On August 9, 2001, the Attorney General announced an extension of the TPS designation and redesignation until September 17, 2002. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with the latest extension validity until September 17, 2006, upon the applicant's re-registration during the requisite time period.

The registration period for TPS under the redesignation period for Somalians was from September 4, 2001 through September 17, 2002. The applicant filed his TPS application on October 2, 2003.

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 Citizenship and Immigration Services (CIS). 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 acting district director determined that the applicant had failed to establish he was eligible for late registration and denied the application on August 26, 2004.

On appeal, the applicant asserts that he is a person without a country and he is homeless; therefore, he requests consideration based on humanitarian reasons.

The record shows that the applicant claimed to have entered the United States on May 30, 1999, by using false documents. On July 19, 1999, the applicant filed Form I-589, Application for Asylum and/or Withholding of Removal. In removal proceedings held on September 13, 2000, in San Diego, California, the Immigration Judge (IJ) found the applicant's testimony "extremely suspect," and the applicant was "not afforded credibility by this Court." The IJ, therefore, denied the "application for asylum, withholding, and protection under the Convention Against Torture," and ordered the applicant removed to Somalia. The applicant appealed the decision of the IJ to the Board of Immigration Appeals (BIA). On September 27, 2002, the BIA administratively closed the case to allow the applicant to apply for TPS.

As provided in 8 C.F.R. § 244.2(g), the applicant is required to file an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of

condition described in 8 C.F.R. § 244.2(f)(2); in this case, within 60 days following the BIA's September 27, 2002 decision. The applicant filed his initial TPS application on October 2, 2003.

The applicant has failed to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). The applicant's statement made on appeal has been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, for the requirements stated above. Consequently, the acting district director's decision to deny the TPS application on this ground will be affirmed.

Beyond the decision of the director, it is noted that the record of proceeding does not contain sufficient evidence to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). This regulation states, in part:

Each application must be accompanied by evidence of the applicant's identity and nationality. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of:

- (i) Passport;
- (ii) Birth Certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

The record contains a photocopy of a letter from an organization called the "Horn of Africa Community in N. America," stating that the applicant is a Somali national who fled the civil war and was born on October 21, 1970, in Mogadishu, Somalia. This letter does not meet the requirements of 8 C.F.R. § 244.9(a)(1). Further, the record does not contain a photo identification of the applicant.

Additionally, the Federal Bureau of Investigation (FBI) fingerprint results report, contained in the record of proceeding, shows that on October 19, 1999, in San Diego, California, the applicant was arrested for Count 1, attempt to commit crime, robbery in the second degree; and Count 2, attempt to commit crime, battery on a person.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

Convictions of these criminal offenses may render the applicant ineligible for TPS under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). However, the actual court disposition of these offenses is not contained in the record of proceeding, nor is there evidence in the record that the applicant was requested to submit the court's final dispositions of all of his arrests. CIS must address these arrests and/or convictions in any future decisions and proceedings.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for temporary protected status 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.