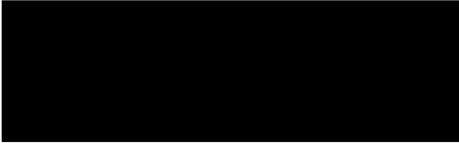




U.S. Citizenship
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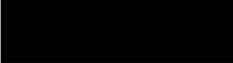
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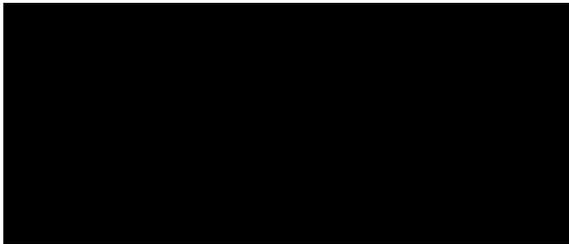
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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.

A handwritten signature in cursive script, appearing to read "R. Wiemann".

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Atlanta, Georgia, 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 director denied the application because the applicant failed to establish he was eligible for late initial registration.

On appeal, counsel states:

“The Atlanta District Director (DD) denied the Appellant’s application for late registration for Temporary Protected Status from Somalia, because, according to the DD [REDACTED] has failed to file an application for late registration as described in 8 CFR 244.2(f)(3)(g) “within sixty-day period immediately following the expiration or termination” of his asylum case. The DD’s decision also states that Appellant failed to provide proof that he filed immediately following the expiration or termination” of his asylum case. The DD’s decision also states that the Appellant failed to provide proof that he filed I-821 application, as requested by the Service on April 5, 2004. The DD’s decision is erroneous. Among the DD’s errors are:

1. The DD failed to take into consideration the fact that Appellant (who had an asylum case pending during the period of September 4, 2001, through September 17, 2002) did not receive the BIA’s final decision denying his asylum case, nor has he become aware of such order until sometime in July 2003. This means that Appellant had no knowledge of a final decision on his pending asylum case, so he may be able to file his application for late registration for TPS within the prescribed 60-day period under 8 CFR Section 244.2(f)(2), and as such could not be charged with actual or constructive notice of the BIA’s order. Therefore, Appellant should not be expected to comply with a deadline of which he had no knowledge.
2. The DD’s argument that Appellant failed to provide proof that he had filed a TPS application is incorrect. Respondent had mailed to the Service a copy of the Service’s payment confirmation receipt indicating that he had paid \$220 on July 24, 2003, for TPS, FP and I-765, along with a copy of the filed applications. The DD confirms receipt of the copy of the I-821, but denies receipt of proof of payment. In any case, as the enclosed copy of the payment confirmation receipt shows, Appellant’s TPS application was received by the CIS Atlanta District Office.
3. The DD’s is not supported by the record.

Therefore, Appellant is entitled to initial late registration for TPS.” (Note: this is end of counsel’s arguments on appeal).

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 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 district director determined that the applicant had failed to establish he was eligible for late registration and denied the application on June 7, 2004.

The record shows that the applicant claimed to have entered the United States on May 15, 1997. On June 11, 1997, the applicant filed Form I-589, Application for Asylum and for Withholding of Removal. In removal proceedings held on May 17, 2002, in Atlanta, Georgia, the Immigration Judge (IJ), denied the appellant's application for asylum and withholding of deportation, and ordered the applicant removed to Somalia or to his "Country of Nationality or Citizenship." The applicant appealed the decision of the IJ to the Board of Immigration Appeals (BIA). On December 11, 2002, the BIA affirmed the decision of the IJ.

On appeal, counsel states that the applicant did not receive the BIA's final decision denying his asylum case, nor did he become aware of such an order until sometime in July 2003. It is noted that the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record shows that the BIA forwarded its final decision to the applicant's former counsel in Atlanta, Georgia, on December 11, 2002.

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 December 11, 2002 decision. The applicant filed his initial TPS application on July 17, 2003, more than seven months later and far outside of the 60-day grace period allowed.

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). Consequently, the district director's decision to deny the TPS application on this ground will be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish that he is a national or citizen of Somalia. The applicant has provided two affidavits from persons concerning his Somali identity. However, affidavits alone do not establish nationality. The record does not contain any photo identification such as a passport or national identity document. 8 C.F.R. § 244.2(a)(1). Therefore, the application is denied for this additional reason.

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.