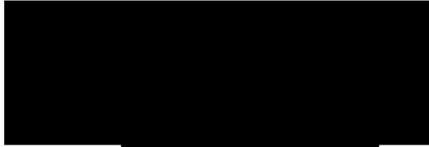




U.S. Citizenship
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Services

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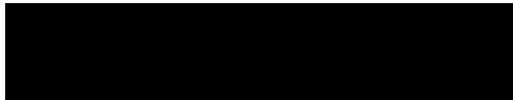
Office: ATLANTA

Date:

APR 02 2007

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
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 is 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, the applicant states:

I am appealing the decision denying my TPS on April 22, 2005. I am appealing this decision because it's erroneous. I filed an application for TPS following the denial of my appeal regarding my asylum case by the BIA. I filed under the initial registration requirements. Unfortunately, my TPS application was filed 3 weeks after the 60 days late filing deadline. This happened because I didn't receive the BIA decision, dated May 18, 2004, until the beginning of August 2004. As soon as I found out about the BIA decision I filed my application. Therefore, my TPS application was filed late for reasons beyond my control.

On August 9, 2004, counsel submitted an affidavit from two of the applicant's friends and a letter from the President of the Somali Development Agency Inc., located in Columbus, Ohio, to establish that the applicant was temporarily outside of the State of Georgia, and in Columbus, Ohio, during the period of May 19, 2004 through July 20, 2004. Counsel asserts that these documents prove that the applicant had not become aware of the BIA decision "until recently."

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 expiring on March 17, 2008, 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 April 22, 2005.

The record shows that the applicant claimed to have entered the United States on January 18, 2001. On February 21, 2001, the applicant filed a Form I-589, Application for Asylum and for Withholding of Removal. In removal proceedings held on January 30, 2003, in Atlanta, Georgia, an Immigration Judge (IJ), denied the appellant's application for asylum and withholding of deportation, and ordered the applicant removed to Somalia. The applicant appealed the decision of the IJ to the Board of Immigration Appeals (BIA). On May 18, 2004, the BIA affirmed the decision of the IJ.

On appeal, the applicant states that he didn't receive the BIA decision, dated May 18, 2004, until the beginning of August 2004. The record shows that the BIA forwarded its final decision to the applicant's former counsel in Atlanta, Georgia, on May 18, 2004, thereby officially transmitting the decision to the applicant, regardless of where he was residing at that time.

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 May 18, 2004, decision. The applicant filed his initial TPS application on August 17, 2004, nearly three months later and outside of the 60-day grace period allowed. It is noted that the applicant was not precluded from filing an earlier TPS application because he had some other action pending, such as an appeal to the BIA.

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.

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.