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FILE:



OFFICE: Portland, Maine

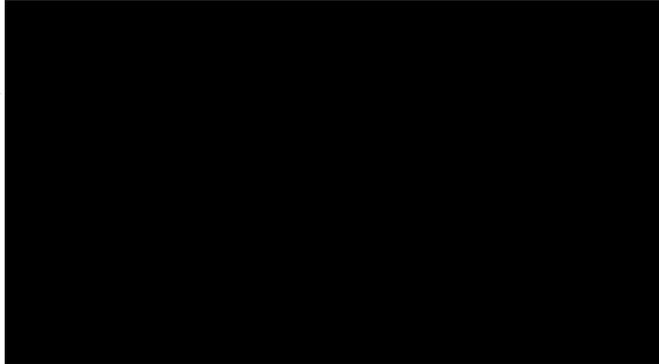
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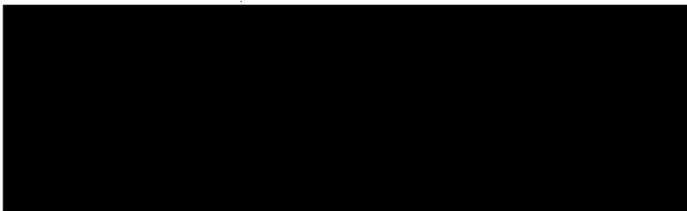
Applicant:



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.

*Cindy N. Gomez*

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The applicant claims to be a 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 and for re-registration.

On appeal, counsel for the applicant submits a brief and additional evidence.

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

- (a) Is a national of a 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for Temporary Protected Status 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 conditions described in paragraph (f)(2) of this section.

On September 16, 1991, the Attorney General designated Somalia under the Temporary Protected Status (TPS) program for a 12-month period that expired on September 16, 1992. That initial designation was extended each subsequent year. On September 17, 2001, Somalia was re-designated for TPS. The latest extension of this re-designation for Somalia for TPS was granted through September 17, 2007.

The initial registration period for Somali nationals under the current TPS designation was from September 4, 2001 to September 17, 2002. The applicant filed his initial Form I-821, Application for Temporary Protected Status, on July 28, 2003. He also filed a Form I-765, Application for Employment Authorization, and a Form I-601, Application for Waiver of Grounds of Excludability, on July 28, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above, and filed his application within the 60-day period prescribed in 8 C.F.R. § 244.2(g).

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants must submit all documentation required in the instructions or requested by 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The applicant claimed on his initial TPS application that he first entered the United States on May 7, 1999, through the port of San Ysidro, California. On May 25, 1999, the applicant filed a Form I-589, Application for Asylum and for Withholding of Removal, with the Asylum Office in Anaheim, California.

During his asylum interview the applicant said that he escaped from Somalia to Kenya after he and his family were attacked by United Somali Congress (USC) militia at his home in Mogadishu in January of 1991. The applicant further explained that he made contact with an alien smuggler in Kenya and arranged to be smuggled out of Kenya using fraudulent documents. He stated that he left Nairobi, Kenya, on May 3, 1999, in the company of the smuggler, and flew to Mexico City via London, England. He stated that he and the smuggler spent the night in Mexico City and then began a two-day bus trip to Tijuana, where he was introduced to another smuggler who provided him with "a card" that would allow him to cross the border. He claimed that he crossed the border at the San Ysidro Port of Entry on May 7, 1999, with the second smuggler, who retained all the "false documents and travel-related papers."

On July 1, 1999, the applicant's asylum application was denied, and the applicant was scheduled for a removal hearing before an Immigration Judge in San Diego, California, on August 10, 1999. In the Notice of Denial, the asylum officer found the applicant's testimony not credible because of significant inconsistencies within his oral

testimony and between his oral and written testimony, and determined that the applicant had failed to meet his burden of establishing that he is a refugee as required at 8 C.F.R. § 208.13.

On July 26, 1999, the applicant's former counsel filed a motion for change of venue from San Diego, California, to Atlanta, Georgia, because the applicant and his family had moved from San Diego to Atlanta. On August 26, 1999, an Immigration Judge in San Diego, California, granted a motion to change the venue from San Diego to Atlanta.

The applicant's first hearing before the Immigration Judge in Atlanta, Georgia, took place on March 20, 2000. The applicant admitted the allegations charged against him and conceded his removability from the United States. The Immigration Judge determined that the applicant also had a pending removal hearing in Newark, New Jersey under the name "[REDACTED]," under record [REDACTED], and that he had filed an application for asylum and for withholding of removal in San Diego, California under the name "[REDACTED]," CIS number [REDACTED]. The judge continued the matter until December 12, 2000, in order to consolidate the applicant's two records of proceeding.

On March 28, 2000, the applicant flew from Atlanta, Georgia to Oslo, Norway, using a fraudulent Canadian passport. He was refused admission to Norway and returned to the United States at Newark, New Jersey, on March 31, 2000, in the custody of two Norwegian immigration officials. When the applicant was presented for immigration inspection at Newark International Airport, he had in his possession a fraudulent Canadian passport in the name of "[REDACTED]" a fraudulent Canadian social security card in the name of [REDACTED] and a fraudulent Texas Identification Card in the name of [REDACTED].

In a sworn statement before an Immigration Officer, the applicant identified himself as [REDACTED]. He stated that he was a Somalian citizen and gave his date of birth as October 10, 1968. The applicant further stated that he did not have any documents to allow him to enter or remain in the United States, and that he had "never applied for any documents from any U.S. governmental office to obtain such documents." The applicant explained that the Canadian passport was purchased for him from a vendor in Kenya for \$2,000. He indicated that he had traveled to London, England, and from there to Oslo, Norway, where he was refused admission and put on a flight to the United States in the custody of Norwegian officials.

On August 15, 2001, the applicant appeared before an Immigration Judge in Atlanta, Georgia, for a removal hearing and a determination as to his applications for asylum, withholding of removal, and relief under the United Nations (U.N.) Convention Against Torture. In his testimony before the Immigration Judge, the applicant stated that he and the smuggler who accompanied him the second time entered the United States (on May 7, 1999) by bus at the San Ysidro Port of Entry. He stated that when the bus arrived at the San Ysidro Port of Entry, everyone on the bus was told to get off the bus by "the border line guards." He stated that this smuggler showed his "documents" to the officers, but no questions were asked of him, and they were then told they could get back on the bus and proceed to their destination. He stated that he subsequently "gave himself up" and filed applications for asylum and for withholding of removal in San Diego, California.

In his order, the Immigration Judge agreed with the asylum officer's conclusion that the applicant's testimony regarding his experiences in Somalia and his initial entry into the United States were not credible. Specifically,

the Immigration Judge stated, “[t]here are a number of material inconsistencies with his claim and his testimony here today as well as what is stated before the Asylum Officer.” The judge noted that the applicant, during his sworn statement at Newark International Airport, New Jersey, gave a false name and date of birth, and falsely claimed that he had never applied for any documents from a United States government office.

The Immigration Judge found that the applicant had abandoned his applications for asylum and for withholding of removal by departing the United States on March 28, 2000. The Immigration Judge further found that the applicant had not established a well-founded fear of persecution, if he were to be returned to his country of birth. The Immigration Judge also found the applicant had not established his true identity or nationality. Additionally, the Immigration Judge found the applicant had not established that he would be tortured upon return to his home country. Therefore, the Immigration Judge denied the applicant’s applications for asylum and for withholding of removal and also his request for relief under the United Nations Convention Against Torture. He further found the applicant inadmissible under section 212(a)(6)(c)(i) of the Act as an alien who attempted to obtain admission into the United States or an immigration benefit through the use of fraud or the willful misrepresentation of material facts, and ordered the applicant removed to Somalia. On December 13, 2002, the Board of Immigration Appeals (BIA) dismissed the applicant’s appeal from the decision of the Immigration Judge.

As stated previously, the applicant did not file his initial TPS application (Form I-821) until July 28, 2003. The applicant subsequently filed an application to re-register for TPS on August 28, 2003.

On January 8, 2004, the district director issued a decision denying the initial application on the ground that the applicant had failed to establish he was eligible for late registration, and denying the re-registration application since there was no TPS previously granted to re-register.

On appeal, counsel asserts that the applicant hand-delivered his TPS application to the District Office in Portland, Maine, on January 22, 2003, which was within 60 days after the BIA dismissed his appeal from the decision of the Immigration Judge as required for a late TPS application in accordance with 8 C.F.R. § 244.2(f)(2) and (g). The record includes a photocopy of a letter from the applicant to the district office, dated January 21, 2003, stating that he was hand-delivering a TPS application, a Form I-765, Application for Employment Authorization, and a Form I-601, Application for Waiver of Ground of Excludability. The applicant stated in the letter that he was enclosing a “money order payable to INS in the amount of \$100.00 for the TPS filing fee,” but that he was requesting a waiver of the filing fee for the Form I-601 because he was not working, and was not enclosing a fee for the Form I-765 because he had already been granted work authorization. According to the applicant in a subsequent affidavit, dated January 21, 2004, the \$100 money order covered the TPS filing fee and the fingerprinting fee, but he was told by an official in the district office when he hand-delivered the Form I-821 on January 22, 2003, that he could not have a receipt because he was asking for a fee waiver in connection with the Form I-601.

Counsel asserts that the applicant called her on February 11, 2003, because he was concerned he had not received a filing receipt for his TPS application. Counsel states that she spoke that day with an officer in the Portland, Maine, District Office, who informed her that the application had been assigned to an examiner, that a decision regarding the applicant’s request for a fee waiver on the Form I-601 would be made in the near future, and that the applicant would be mailed a notice to pay the fee if the waiver request was denied. Counsel states that “[o]n July 30, 2003, [the applicant] received a filing receipt from [the district office] indicating payment for his I-821

and fingerprinting fees. The receipt was dated July 28, 2003.” A photocopy of that receipt is in the record. It lists two \$50.00 fees for the TPS application and the fingerprinting, and “0.00” for the Forms I-601 and I-765, thus confirming that the filing fee on the Form I-601 had been waived. The record also includes a photocopy of the letter to the applicant from the Portland District Office, dated July 30, 2003, stating that his Forms I-821, I-765, and I-601 had “been received on July 28, 2003” and that his “receipt for fees is attached.”

Citizenship and Immigration Services (CIS) regulations at 8 C.F.R. § 103.2(a)(7) provide that:

An application or petition received in a [CIS] office shall be stamped to show the *time and date of actual receipt* and . . . *shall be regarded as properly filed when so stamped*, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted.” [Emphasis added.]

The applicant’s Forms I-821, I-765, and I-601 are all stamped “July 28, 2003.” There is no stamp on any of the three applications reflecting an initial receipt date at the Portland, Maine, District Office at any time prior to July 28, 2003.

According to counsel, however, because the applicant hand-delivered his TPS application on January 22, 2003, and its receipt was verbally confirmed by an official in the office on February 11, 2003, the applicant qualifies for late initial registration because he had a pending asylum application during the initial registration period for Somalis, and he filed his TPS application with the Portland District Office within 60 days of December 13, 2002, the date the BIA dismissed the applicant’s appeal.

The evidence of record is insufficient to establish a filing date of the TPS application on January 22, 2003. The applicant’s letter to the Portland, Maine, District Office, dated January 21, 2003, bears no stamp or other authenticating marking on the applicant’s copy to show that the original (with an accompanying Form I-821) was actually hand-delivered to the district office the following day. The record includes two photocopied Western Union money orders, each in the amount of \$50.00, to the Immigration and Naturalization Service (INS) office in Portland, Maine. The money orders are dated January 14, 2003, which is eight days before the applicant asserts that he hand-delivered his TPS application to the district office. Though the applicant indicates that the money orders were for the TPS filing fee and the fingerprinting fee, no such specification is on the documents. Neither of the money orders identifies the payor, so it is impossible to discern whether they are from the applicant. Furthermore, the receipt for the TPS filing and fingerprinting fees issued by the Portland, Maine, District Office on July 28, 2003, identifies the form of payment for the two \$50.00 charges as one check in the amount of \$100.00, not two money orders of \$50.00, each bearing a date of six months earlier. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). The applicant has not resolved the foregoing inconsistencies in connection with the money orders dated January 14, 2003, and the payment receipt dated July 28, 2003. Counsel cites her records as showing that she had a telephone conversation with an official at the Portland, Maine, District Office on February 11, 2003, who confirmed that the applicant’s Form I-821 had been received. However, no written record of that conversation, nor any written corroboration from the district office official, has been submitted. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988; *Matter of Ramirez-Sanchez*, 17 I&N 503, 506 (BIA 1980).

Based on the foregoing analysis, the AAO concludes that the applicant has not established that he filed his initial TPS application within 60 days of the date the BIA dismissed his appeal on December 13, 2002. Accordingly, the applicant is not eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2) and (g). The director's decision to deny the initial application for TPS will be affirmed. The director's decision to deny the re-registration application filed on August 28, 2003, will also be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish continuous residence and continuous physical presence in the United States since September 4, 2001. In addition, the applicant has not submitted sufficient evidence to establish his identity and nationality in accordance with 8 C.F.R. § 244.9(a)(1). He has presented identification in multiple names and has given at least three different dates of birth. Accordingly, the application must also be denied for these reasons.

Furthermore, the record indicates that the applicant resided in Kenya for eight years – from 1991 to 1999 – before making his way to 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. *See* 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.

The record indicates that the applicant may have been firmly resettled in Kenya, within the meaning of section 208(b)(2)(A)(vi) of the Act and 8 C.F.R. § 208.15, during his eight-year stay in that country from 1991 to 1999. The applicant has not demonstrated that the conditions of his stay in Kenya met those described in 8 C.F.R. § 208.15(a) and (b), as required to establish that he was not permanently resettled in that country prior to his arrival in the United States. Therefore, the application must be denied on this ground as well.

It is noted that the applicant has also been found inadmissible under section 212(a)(6)(c)(i) of the Act, and his Form I-601 has not been adjudicated. Any further determinations before the Department of Homeland Security must also take these exclusionary factors under consideration.

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 TPS 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 that burden.

**ORDER:** The appeal is dismissed.