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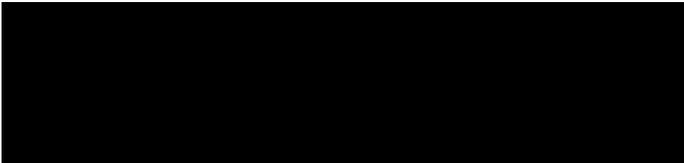


FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: JUL 16 2007
[WAC 06 007 70270]

IN RE: Applicant: [REDACTED]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The case is remanded to the director for further action.

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 on the ground that the applicant had failed to establish she registered for TPS during the initial registration period or was eligible for late registration.

On appeal, counsel asserts that the 12-year-old applicant and her mother initially filed a timely late registration for TPS in 2003, but that the CIS (Citizenship and Immigration Services) office where it was filed failed to act thereon, and that the current application filed in 2005 “should have been accepted *nunc pro tunc* to the original date.” Counsel also asserts that CIS should apply the doctrine of equitable tolling to the applicant’s second TPS application, finding it timely, because her mother’s previous attorney failed to notify her of the 60-day deadline to file a TPS application after her mother’s asylum request was denied judicial review.

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.

Somalia was originally designated as a state whose nationals are eligible for TPS in September 1991. On August 9, 2001, the Attorney General announced an extension of the TPS designation and redesignation until September 17, 2002. Persons applying for TPS offered to Somalians must demonstrate continuous residence and continuous physical presence in the United States since September 4, 2001. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with the latest extension valid until March 17, 2008, upon the applicant's re-registration during the requisite time period.

The registration period for TPS under the re-designation period for Somalians was from September 4, 2001 through September 17, 2002. To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The record reveals that the Form I-821, Application for Temporary Protected Status, currently before the AAO on appeal, was filed with the California Service Center on October 7, 2005. On July 13, 2006, the director denied the application on the ground that it was not filed during the initial registration period (from September 16, 1991 to September 16, 1992), or during the re-designation registration period (from September 4, 2001 to September 17, 2002), and the applicant filed to establish that she qualified for late registration under 8 C.F.R. § 244.2(f)(2) and (g).

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 record shows that the applicant's mother ([REDACTED]) filed a Request for Asylum in the United States (Form I-589) on August 30, 1999. On September 1, 1999, the applicant was added to [REDACTED] Form I-589 as her dependent. The request for asylum was referred to an Immigration

Judge in November 1999, who denied asylum on July 21, 2000. The decision was appealed to the Board of Immigration Appeals (BIA), who likewise denied asylum on March 31, 2003.

The applicant subsequently submitted a TPS application to the DHS (Department of Homeland Security) office in Los Angeles, California, which was stamped as received on April 15, 2003, accompanied by a fee of \$50.00. Though the stamp indicates that the application was accompanied by a payment of \$50.00, there is no evidence on the form or elsewhere in the record that the Form I-821 was transferred to the California Service Center for adjudication.

Meanwhile, the applicant's mother petitioned to the U.S. Court of Appeals for the Ninth Circuit to review the BIA's denial of her asylum request. In a memorandum decision filed on March 4, 2005, the court denied the petition for judicial review. The court's mandate was issued on April 26, 2005.

Counsel states that the applicant's mother did not learn about the Ninth Circuit decision until September 15, 2005, after which she filed the current TPS application with the California Service Center on October 7, 2005. By decision dated July 13, 2006, however, the director denied the application because it was not filed during the re-designation registration period of September 4, 2001 to September 17, 2002, or within 60 days of the end of the qualifying condition for late registration under 8 C.F.R. § 244.2(f)(2), as required under 8 C.F.R. § 244.2(g).

On appeal, counsel asserts that CIS should exercise its discretion to accept the applicant's current TPS application *nunc pro tunc* to the filing date of the original TPS application submitted to the DHS office in Los Angeles in April 2003, which would make it a timely filed late registration under the provisions of 8 C.F.R. § 244.2(f)(2) and 8 C.F.R. § 244.2(g). Alternatively, counsel asserts that CIS should apply the doctrine of equitable tolling to the current TPS application to find it timely filed because of the former attorney's failure to notify the applicant in a timely manner of the 60-day window prescribed in 8 C.F.R. § 244.2(g) to file a TPS application after the Ninth Circuit denied the petition for judicial review of the asylum request.

In this case, the California Service Center should have treated the applicant's initial Form I-821, submitted to the DHS Los Angeles office on April 15, 2003, as timely filed. The stamp on the form records the date of receipt as April 15, 2003, for a fee of \$50.00, and the record includes the photocopies of two receipts of "USDHS Los Angeles," dated April 15, 2003, confirming that the office had received \$50.00 from the applicant for her Form I-821, in addition to another \$50.00 for the receipt of a Form I-821 for her mother. Having received the filing fees for the two applications, the DHS Los Angeles office should have forwarded the two applications to the California Service Center in nearby Laguna Niguel, California, for adjudication. Accordingly, the applicant's TPS application will be treated as having been constructively filed on April 15, 2003. As that date was within 60 days of the denial of [redacted]'s asylum request by the BIA, the TPS application satisfies the conditions prescribed in 8 C.F.R. § 244.2(f)(2) and 8 C.F.R. § 244.2(g) for late registration.

The applicant's case, however, is dependent on the TPS application of her mother. On March 13, 2007, the AAO remanded [redacted]'s TPS case¹ after noting that the record contains an unadjudicated Form I-601, Application for Waiver of Grounds of Excludability. Therefore, the applicant's case will also be remanded for further consideration and to await the outcome of [redacted]'s case, and entry of a new decision.

¹ It is noted that the AAO's decision to remand [redacted] case listed the applicant's file [redacted] and inadvertently indicated that this file was consolidated with [redacted]. The files were not consolidated, nor should they have been, as they represent different individuals/applicants.

It is noted that the record of proceeding does not contain the applicant's birth certificate and picture identification, or a passport, to establish her nationality and identity as required by 8 C.F.R. § 244.9(a)(1).

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.