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u.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COpy**

[Redacted]

FILE:

[Redacted]

Office: COLUMBUS DISTRICT OFFICE Date: MAR 03 2008

INRE:

Applicant:

[Redacted]

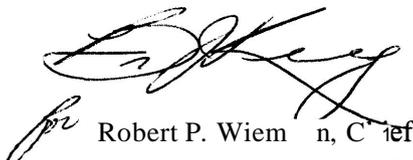
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[Redacted]

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.

  
for Robert P. Wieman, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Columbus District Office, and is now before the Administrative Appeals Office on appeal. 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 had firmly resettled in Canada under an alias prior to arriving in the United States.

On appeal, counsel for the applicant asserts that he did not firmly resettle in Canada, but fails to submit any evidence in support of his appeal.

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 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.

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. Sections 244(c)(2)(B)(ii) and 208(b)(2)(A)(vi) of the Immigration and Nationality Act (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.

Section 8 C.F.R. § 244.9 requires applicant's to submit all information requested in the instructions of the forms and as may be requested by CIS. It also provides that acceptable evidence of nationality are:

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

The phrase 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.

The phrase 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.

Persons applying for TPS offered to Somalians must demonstrate continuous residence in the United States since September 4, 2001, and continuous physical presence in the United States since September 4, 2001. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until March 7, 2008, upon the applicant's re-registration during the requisite time period.

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 first issue in this matter is the district director's denial of TPS based on the applicant's firm resettlement in Canada. The AAO would note that it is the applicant's burden to establish eligibility. In this case CIS discovered that the applicant had obtained his asylum status in the United States fraudulently, and that he had resided in Canada under a different name prior to his arrival in the United States. The record contains information that the applicant applied for some form of status in Canada, but due to the fraudulent nature of the information provided by the applicant CIS cannot make a complete, informed determination of the facts surrounding the applicant's status in Canada. On appeal counsel for the applicant makes numerous statements but fails to provide any documentary evidence in support of his assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Nor are the unsupported assertions of counsel entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Given the lack of the applicant's credibility, and counsel's failure to provide any documentary evidence, the AAO holds that the district director's conclusion has not been rebutted, and will not disturb his decision.

Beyond the decision of the director, the applicant has failed to establish his national identity. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *affd.* 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis. In this case it was determined that the applicant had firmly resettled in Canada under the name [REDACTED] and was from Djibouti, not Somalia as the applicant claimed on his TPS application. These facts impeac the credibility of the applicant's assertions and are fatal to his application for TPS. Doubt cast

on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The applicant has not submitted an authentic, credible birth certificate, passport, or national ID. Therefore, the application will be denied for the additional reason that the applicant has failed to establish his identity or nationality.

Beyond the decision of the director, the applicant failed to establish he was eligible to file a late initial registration. The initial registration period for Somalians was from September 4, 2001, through September 17, 2002. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS) on June 9, 2004. 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(t)(2) above.

On appeal, counsel for the applicant asserts the applicant has been **granted** asylum.

The applicant had been granted asylum November 23, 1999. However, that asylum was revoked on August 15, 2000, after CIS determined that the applicant had lied about his nationality and identity and obtained his asylum fraudulently.

The applicant did not file his application during the initial registration period or during the allotted 60-day late registration period described in 8 C.F.R. § 244.2(g). Consequently, the application will be denied for this additional reason.

The next issue in this proceeding is whether the applicant has established his continuous residence in the United States since September 4, 2001, or his continuous physical presence in the United States since September 4, 2001.

The record contains some evidence of the applicant's presence during the required period, but the applicant himself has failed to submit any specific, credible evidence of his continuous residence and physical presence during the required period.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since September 4, 2001, or his continuous physical presence in the United States since September 4, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed.

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 this burden.

**ORDER:** The appeal is dismissed.