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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: DENVER Date: FEB 06 2004

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: [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.

Cindy M. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Denver, Colorado, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claiming to be a native and citizen of Somalia, is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The district director denied the application because the applicant failed to establish that he was a national or citizen of Somalia.

On appeal, counsel asserts that the applicant is a national of Somalia and did present evidence to support this assertion. Counsel submits additional documentation, including a copy of a letter from the United Nations High Commissioner for Refugees in Kenya, dated October 17, 1994.

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 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 section 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 conditions described in paragraph (f)(2) of this section.

Persons applying for TPS offered to Somalians must demonstrate continuous residence in the United States and continuous physical presence in the United States since September 4, 2001. On August 9, 2002, the Attorney General announced an extension of the TPS designation until September 24, 2002. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security , with validity until September 17, 2004, upon the applicant's re-registration during the requisite time period.

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.

8 C.F.R. § 244.9(a)(1) provides, in part:

Each application must be accompanied by evidence of the applicant's identity and nationality. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order may consist of:

(i)Passport;

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

The applicant claims on his application that he is a citizen of Somalia. The record of proceeding contains the applicant's passport issued in Kenya on June 8, 1992, indicating that the applicant was born in Wajir, Kenya, and is a national of Kenya.

The district director determined that the applicant had failed to establish that he was a national of Somalia.

On appeal, counsel resubmits a copy of a Democratic Republic of Somalia Ministry of Transportation document dated February 4, 1987. Counsel further submits a copy of the applicant's Secondary School Leaving Certificate, dated October 8, 1988, and a copy of a letter from the United Nations High Commissioner for Refugees in Kenya, dated October 17, 1994. The letter from the High Commissioner states that the applicant is a "prima facie of Somalia origin." This facsimile of a letter, without additional documentation, is insufficient to establish that the applicant is, in fact, a national of Somalia.

It is noted that the applicant's date of birth on the school certificate is listed as August 14, 196; however, on the applicant's passport, the date of birth is listed as May 25, 1958.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value.

Beyond the decision of the director, it is also noted that the record indicates that the applicant had resided in Kenya (based upon the applicant's own assertions) from 1992 to 1999. His wife and children still reside there.

Under section 244 (c)(2)(B)(ii) of the Immigration and Nationality Act, an applicant is considered ineligible for TPS if he or she is firmly resettled in another country prior to arriving in the United States. The applicant's residence in Kenya, as a citizen of Kenya, under a Kenyan passport, with his wife and children for over 6 years, precludes a favorable finding for this reason as well. As the appeal will be dismissed for the reason as stated above, the issue will not be discussed further at this time.

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.