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

U.S. Citizenship and Immigration Services

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FILE: Office: SAN FRANCISCO Date: MAY 21 2004

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:

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

PUBLIC COPY

DISCUSSION: The application was denied by the District Director, San Francisco, California, 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 director determined that the applicant: (1) failed to establish she was a national of Somalia; (2) failed to register for TPS during the requisite time period; and (3) had firmly resettled in another country.

On appeal, counsel asserts that the director erred in his findings. She indicates that she is filing a separate written brief and/or evidence within 30 days. To date, however, no additional documentation has been received. Therefore, the record shall be considered complete.

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 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 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.

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 of preference may consist of:
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> (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 first issue to be discussed in this proceeding is the issue of the applicant's nationality.

The applicant claims on her application that she is a citizen of Somalia. The director determined that the applicant failed to provide documentation to establish that she is a national of Somalia. The director noted that the applicant entered the United States with an Ethiopian passport, and the Service, now Citizenship and Immigration Services (CIS), was unable to determine her nationality.

On appeal, counsel states that "BCIS [Citizenship and Immigration Services (CIS)] erred in its determination that Respondent was not a citizen and national of Somalia, as the Immigration Court and Board of Immigration Appeals [BIA] accepted her citizenship and nationality as a matter of fact." Counsel submits a copy of the Department of State, Foreign Affairs Manual, 9 FAM PART IV Appendix C, indicating that "there are no police records, birth certificates, school records etc., available from Somalia." It is noted, however, that the Immigration Judge (IJ), in her decision, noted that the applicant had submitted perjurized testimony during her asylum interview. The IJ further determined that there was a clear discrepancy and contradiction between the applicant's initial application and her subsequent declaration, and that the applicant offered no convincing explanation for the said discrepancy, except for the applicant's desire to obtain a benefit under the Immigration Act in the United States, and, therefore, the applicant is not a credible person.

The IJ further determined that the applicant:

> claimed that when she came in to the United States, she had a Ethiopian passport...She claimed that the said passport was being used to allow her travel through Europe, and the said passport was shown to the INS examiner when she entered the United States. She claimed that the INS examiner reviewed the passport and did not raise any question, but instead allowed her to enter the United States accordingly.

Furthermore, even if the applicant is, in fact, a citizen of Somalia, the United States Court of Appeals, in *Chee Kin Jang v. Reno*, 113 F. 3d 1074 (9th Cir. 1997), found that the Service reasonably interpreted the term "PRC national" in CSPA (Chinese Student Protection Act) to Exclude Chinese dual nationals who did not declare citizenship of PRC (People's Republic of China) when they entered the United States, and that the Service's treatment of PRC dual nationals, depending on whether they entered under a PRC passport or a passport of a different country, was reasonable. The Court states that an alien is bound by the nationality claimed or established at the time of entry for the duration of his or her stay in the United States. Thus, a dual national CSPA principal applicant must have claimed PRC nationality at the time of his or her last entry into the United States.

In *Chevron USA, Inc. v. Natural Resources Defense Counsel*, 467 U.S. 837, 842-843 & n.9 (1984), the district court held that the practice of binding an alien to his claimed nationality "promotes the congressional policy of insuring that an alien will be able to return, voluntarily or otherwise, to his or her country of origin if requested to do so and provides for consistency in the enforcement of law, especially given the large numbers of nonimmigrant foreign nationals who visit the United States each year."

The BIA, in *Matter of Ognibene*, 18 I&N Dec. 425 (BIA 1983), held that under appropriate circumstances in a given proceeding of law, the operative nationality of a dual national may be determined by his conduct without affording him the opportunity to elect which of his nationalities he will exercise. The General Counsel, in GENCO Op. 84-22 (July 13, 1984), reinforced this concept and states, "In interpreting a law which turns on nationality, the individual's conduct with regard to a particular nation may be examined. An individual's conduct determines his 'operative nationality.' The 'operative nationality' is determined by allowing the individual to elect which nationality to exercise. The nationality claimed or established by the nonimmigrant alien when he enters the United States must be regarded as his <u>sole</u> nationality for the duration of his stay in the United States." (Emphasis in original).

The nationality the applicant claimed at the time the applicant first came into contact with CIS was that of Ethiopia. Although the issue of dual nationality is not at question in this proceeding, the record is clear in establishing that the applicant elected to present herself as a national of Ethiopia to the United States government at the time of her entry into the United States.

Ethiopia is not a designated foreign state under Section 244 of the Act. The applicant, therefore, does not meet the eligibility requirements of being a national of a state designated under section 244(b) of the Act. Accordingly, as the applicant has not demonstrated that her "operative nationality" is that of a TPS-designated country, the director's decision to deny the application on this ground will be affirmed, as a matter of discretion.

The second issue in this proceeding concerns the applicant's failure to register for TPS during the requisite time period.

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 (the Secretary), with validity until September 17, 2004, upon the applicant's re-registration during the requisite time period.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The initial registration period for Somalians was from September 4, 2001 through December 3, 2001. The record reflects that the applicant filed her TPS application on May 13, 2002.

The record confirms that the applicant filed her application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from September 4, 2001 through December 3, 2001, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. *See* 8 C.F.R. § 244.2(g).

The record reflects that the applicant was in removal proceedings during the registration period. On November 1, 2001, the Immigration Judge (IJ) denied the application for asylum and application for withholding of removal, and ordered the applicant removed to Somalia. On November 30, 2001, the applicant appealed the decision of the IJ to the BIA. On October 17, 2002, the BIA ordered the applicant's appeal dismissed, and permitted the applicant to voluntarily depart from the United States within 30 days from the date of the order.

Accordingly, the applicant has met the condition described in 8 C.F.R. § 244.2(f)(2)(ii). Therefore, the applicant has overcome this portion of the director's decision.

The third issue in this proceeding is whether the applicant was firmly resettled in Ethiopia.

A review of the record shows that prior to the applicant's arrival into the United States, she was residing in Ethiopia from 1992 through 2000 with her other relatives. Her mother passed away in 1994, and the applicant went to work for a woman named Miriam and stayed with her until 2000. In her asylum and removal hearing, the applicant stated that she was not in a refugee camp for Somalians, but lived without any hindrances in Ethiopia. While it is noted that the applicant's testimony during removal proceedings is replete with discrepancies, as noted by the IJ, it is clear that she resided in Ethiopia for a significant length of time and entered the United States with an Ethiopian passport.

As provided in sections 244(c)(2)(B)(ii) and 208(b)(2)(A)(vi) of the Act, an alien shall not be eligible for TPS if the Secretary finds that the alien was firmly resettled in another country prior to arriving in the United States.

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 residence 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, or that he or she did not establish significant ties in that country; or
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> (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 [sic] in the country.

The record contains evidence that the applicant lived and worked in Ethiopia for eight years. Counsel failed to provide any evidence that the applicant was not firmly resettled in Ethiopia. However, during asylum and removal proceedings, the IJ noted that the applicant:

> lived undisturbed for eight years in Ethiopia....In fact, according to the respondent [applicant], it appears that she traveled on an Ethiopian passport that is repeatedly used and inspected by the INS and was allowed in the United States without any incidents."

The IJ further noted that the applicant testified that she lived in Ethiopia for at least eight years immediately before she came to the United States, and that it is well established that an alien may not be granted asylum if she has been firmly resettled within the meaning of 8 C.F.R. § 208.15. The IJ stated that the 9th Circuit Court had recently addressed the issue of firm resettlement in *Yang v. INS*, 146 F. 3rd 1114, 1117 (9th Cir. 1998), that dealt with a claim that the firm resettlement bar would apply even if the individual does not have a present right to return to that nation.

The eight-year duration of the applicant's unrestricted residence in Ethiopia is deemed sufficient to support a deduction of resettlement in that country. Consequently, the director's decision to deny the TPS application on this ground will also 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.