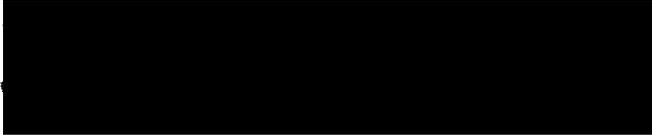


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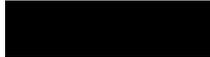
U.S. Citizenship
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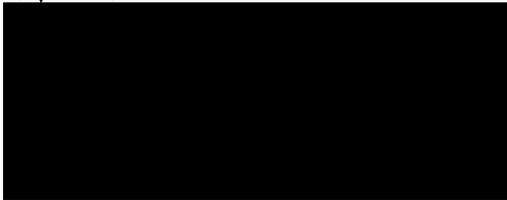
Applicant:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, St. Paul, Minnesota, 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 is inadmissible to the United States under Section 212 (a)(6)(C)(i), and therefore, ineligible for temporary protected status. It is also noted that the applicant had not filed an application for a waiver of the grounds of inadmissibility.

On appeal, counsel, on behalf of the applicant, asserts the applicant's eligibility for TPS.

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.

The phrase *brief, casual, and innocent absence*, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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 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 initial registration period for Somalians was from September 4, 2001 through December 3, 2001. The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or

she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse/child of an alien currently eligible to be a TPS registrant, and he or she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

The record reveals that the applicant filed his initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS) on September 4, 2002. That application was denied, because the director determined that the applicant had previously registered as a refugee in Canada in 1993. The applicant did not file either a motion or an appeal for this application during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on October 9, 2003. The director denied this second application on February 24, 2004, because the applicant was found inadmissible to the United States under Section 212 (a)(6)(C)(i), and therefore, ineligible for temporary protected status.

On appeal, counsel states that the laws and regulations “do not allow the Service to ‘lift the veil’, and inquire into how an asylum applicant entered the United States before granting the applicant TPS.” Counsel further asserts that the applicant has met the requirements for TPS late registration. In addition, counsel also states that the applicant is a citizen of Somalia and has been continuously physically present in the United States since February 20, 1997, and that the applicant is admissible as an immigrant under Section 208(a)(1).

Section 244.3, Applicability of grounds of inadmissibility, states in part:

(b) Waiver of grounds of inadmissibility. Except as provided in paragraph (c) of this section, the Service may waive any other provision of section 212(a) of the Act in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is inadmissible on grounds which may be waived as set forth in this paragraph, he or she shall be advised of the procedures for applying for a waiver of grounds of inadmissibility on Form I-601 (Application for waiver of grounds of excludability).

(c) Grounds of inadmissibility that may not be waived. The Service may not waive the following provisions of section 212(a) of the Act:

- (1) Paragraphs (2)(A)(i), (2)(B), and (2)(C) (relating to criminals and drug offenses);
- (2) Paragraphs (3)(A), (3)(B), (3)(C), and (3)(D) (relating to national security);
- (3) Paragraph (3)(E) (relating to those who assisted in the Nazi persecution).

The director denied the application because the applicant stated that he had entered the United States by fraud, using someone else’s documents for entry. Therefore, the applicant was found inadmissible under Section 212(a)(6)(C)(i), and the director denied his application. Counsel, on appeal, argues that the laws do not permit the Service to “lift the veil” and inquire about an asylum applicant entered the United States before granting TPS.

However, counsel errs in his argument concerning the matters at hand – the applicant’s eligibility as an applicant for TPS under 8 C.F.R. § 244.3 must be examined. The burden of proof is upon the applicant to establish that he or she meets the requirements under TPS regarding admissibility, or otherwise, as detailed specifically in the laws and regulations pertaining to TPS. Additionally, the director may use the applicant’s testimony in order to determine eligibility pursuant to 8 C.F.R. § Section 103.2. Pursuant to 8 C.F.R. § 244.3(b), this ground of inadmissibility may be waived; however, the applicant has not filed a Form I-601, Application for Waiver of Grounds of Excludability, in regards to the applicant’s inadmissibility to the United States.

Counsel also asserts, on appeal, that the applicant is a citizen of Somalia. The record of proceedings, however, does not contain any evidence that the applicant is a national or citizen of Somalia.

8 C.F.R. § 244.9, states that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. 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: (Amended 11/16/98; 63 FR 63593)

(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.

It is noted that during the applicant's asylum and removal proceedings contained in the record, the immigration judge noted that the applicant "has already passed himself off as a native and/or citizen of another country other than Somalia." Further, the director noted in the decision to deny the instant application that the applicant claimed to have entered the United States with Kenyan documentation. Counsel has failed to provide any documentary evidence to support his claim that the applicant is a "citizen of Somalia." The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). The burden of proof is upon the applicant to establish that he meets the above requirements. The record contains no credible evidence to establish that the applicant is a national or citizen of Somalia. Therefore, the application will be also denied for this reason.

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 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.