



U.S. Citizenship
and Immigration
Services

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FILE:



Office: St. Paul District Office

Date: OCT 04 2007

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: Self-represented

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, the applicant asserts his claim of 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 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 record reveals that the applicant filed his initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS) on November 26, 2003, after the initial registration period had closed. 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(f)(2) above.

The director the instant 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, the applicant states that he is from a war torn country of Somalia, East Africa and requests a review of his case. In addition, the applicant provides copies of two affidavits of identity from acquaintances who state that have known the applicant in Somalia.

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. 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), 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.

In addition, the applicant claims on his applications for temporary protected status and on appeal, he 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. The affidavits provided by the applicant, on appeal, do not establish the applicant's identity or nationality.

Further, 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.

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.

Moreover, 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
- (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.

Notwithstanding the above regarding the lack of any creditable evidence of the applicant's nationality or citizenship, it is also noted that the applicant had firmly resettled in Kenya before he arrived the United States in

June 1994. A review of the record also reflects that prior to the applicant's arrival into the United States, he resided in Kenya with his spouse from 1994 to 1999. In addition, the applicant also stated under oath on his application for TPS that he last habitually resided in Kenya. The record also reflects that the applicant married his wife in Kenya in 1998. An alien shall not be eligible for TPS if the alien was firmly resettled in another country prior to arriving in the United States. The applicant's testimony during removal proceedings clearly reflects that the applicant had resided Kenya for a significant length of time immediately before his claimed arrival in the United States in 1999. Accordingly, the application will also be denied on this ground.

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.