

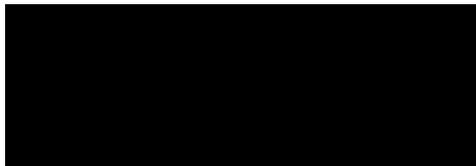
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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Services

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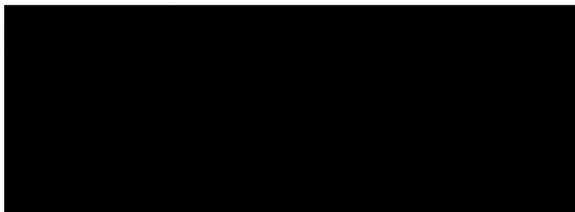
Applicant:



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, Atlanta, Georgia, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a native and 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 failed to establish he was eligible for late initial registration.

On appeal, the applicant submits a statement.

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 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.

Persons applying for TPS offered to Somalia must demonstrate continuous residence and continuous physical presence in the United States since September 4, 2001. The initial registration period for citizens of Somalia was from September 4, 2001 to September 17, 2002. The record reveals that the applicant filed his initial TPS application with Citizenship and Immigration Services (CIS) on October 1, 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(f)(2) above.

The burden of proof is upon the applicant to establish that he 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On February 7, 2005, the applicant was requested to submit evidence establishing his eligibility for late initial registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit the final court dispositions of all arrests since his arrival in the United States. The applicant, in response, provided a court document indicating that the applicant was convicted of one petty offense, but he failed to submit any evidence to establish his eligibility for late initial registration.

On November 15, 1999, the asylum application was denied and the applicant was referred for a hearing before an Immigration Judge. During his hearing before the Immigration Judge in Atlanta, Georgia, the applicant claimed that he was admitted to the United States at John F. Kennedy International Airport on July 20, 1999, using a fraudulent Kenyan passport that did not contain his picture. The applicant further stated that the Immigration Inspector failed to ask him how long he was staying in the United States or why he was coming to visit this country. The Immigration Judge found the applicant's testimony not credible and denied the applicant's applications for asylum, withholding of removal, voluntary departure, and relief under the UN Torture Convention. On the same day, April 9, 2001, the Immigration Judge ordered the applicant removed to his "country of nativity, or in the alternative, Somalia." On April 8, 2003, the Board of Immigration Appeals (BIA) affirmed the decision of the Immigration Judge. To date, no warrant of removal appears to have been issued in this case.

In order to qualify for late initial registration based on a pending application for asylum, withholding of removal, or voluntary departure, the applicant was required to file his TPS application within 60 days of the date such applications terminated. In this case, the applicant did not file his TPS application until October 1, 2004, a year and six months after the BIA affirmed the decision of the Immigration Judge.

In a letter dated February 28, 2005, counsel stated:

[The applicant] was unable to file his TPS application timely, following the final decision on his asylum case on April 8, 2003, because he simply did not receive the BIA decision in time for Initial Late Registration (within 60 days from decision), and had no knowledge of the decision. The reason for this is because when our office mailed the BIA decision with an advisement that he needed to file for TPS, the Post Office wrongfully returned the package to our office as undeliverable. It must be noted that [the applicant] was at the time residing at the address on the envelope and has not at any time relocated or changed his address. Therefore, [the applicant] should not be charged with missing the deadline for TPS Late Registration. . .”

Counsel submitted a photocopy of a photocopy of a mailing envelope from The Fogle Law Firm, Inc, postmarked April 26, 2003, that bears the United States Postal Service (USPS) notation “Return to Sender, Attempted, Not Known.”

It is the applicant’s responsibility to ensure that he receives CIS decisions regarding pending applications or petitions. Counsel clearly received the BIA decision and forwarded the decision to the applicant. Even if the decision was improperly returned to counsel as undeliverable mail, ample time remained for counsel to deliver the BIA decision to the applicant and for the applicant to apply for TPS within the requisite 60-day period. The applicant did not file his initial TPS application a week or two weeks late, but rather, a year and a half after the issuance of the BIA decision. Therefore, counsel’s assertions cannot be accepted.

The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS will be affirmed.

The applicant has also failed to establish his identity and nationality as described at 8 C.F.R. § 244.9(A)(1). In support of his TPS application, the applicant submitted affidavits from two individuals attesting that they have personal knowledge that the applicant was born in Mogadishu, Somalia, on January 15, 1980. These affidavits are not sufficient to establish the applicant’s identity and nationality. The applicant has not provided any evidence to establish that he attempted to obtain an official Somali identification document bearing his photo and/or fingerprint. Nor has he provided an official Somali document to establish his identity and nationality. Furthermore the Immigration Judge stated in his order removal order dated April 9, 2001, “[t]he [applicant], through his own testimony, has not . . . properly established identity or nationality. . . .” Finally, the Immigration Judge found the applicant inadmissible to the United States under section 212(a)(6)(c)(i) of the Act as an alien who attempted to obtain admission to the United States or an immigration benefit through the use of fraud or the willful misrepresentation of a material fact. Therefore, the application also must be denied for these reasons.

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.



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ORDER: The appeal is dismissed.