



U.S. Citizenship  
and Immigration  
Services

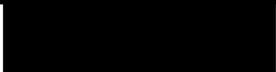
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FILE:



OFFICE: ATLANTA

DATE:

JUN 30 2006

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:



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 she was eligible for late initial registration.

On appeal, counsel for 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 1, 2001 to September 17, 2002. The record reveals that the applicant filed her initial TPS application with Citizenship and Immigration Services (CIS) on April 2, 2004.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she 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 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 her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

The district director determined that the applicant had failed to establish she was eligible for late initial registration and denied the application on April 27, 2004.

On appeal, counsel for the applicant asserts that the district director failed to take into consideration the fact that the applicant did not receive the final decision from the Board of Immigration Appeals (BIA) dismissing the applicant's appeal from the Immigration Judge's final removal order until the end of March 2004. Counsel states that the applicant filed her initial TPS application within 60 days of receipt of the BIA dismissal decision.

The applicant indicated on her Form I-821, Application for Temporary Protected Status, that she entered the United States without inspection at New York, New York, on October 14, 1999. The applicant filed a Form I-589, Request for Asylum and for Withholding of Removal, on December 28, 1999. During her asylum interview, the applicant stated that a smuggler arranged for her to fly from Kenya to London, and from London to New York, New York. The applicant claimed that the smuggler provided her with a fraudulent Kenyan passport containing a nonimmigrant visa of unknown classification, and traveled with her from Kenya to New York. The applicant further claimed that the smuggler answered all the Immigration Inspector's questions, and that the Immigration Inspector admitted her for a period of six months. The applicant indicated that the smuggler took the fraudulent Kenyan passport from her after she was admitted to the United States.

On January 11, 2000, the applicant's asylum application was rejected by the Los Angeles Asylum Office, because she failed to establish that she filed her asylum application within one year of her arrival in the United States. The applicant was referred for a removal hearing before an Immigration Judge. On July 20, 2000, an Immigration Judge in San Diego, California, ordered the applicant removed to Somalia in absentia when the applicant failed to appear for her removal hearing or request that her hearing be re-scheduled. Counsel for the applicant filed a

motion to reopen the case on September 29, 2000. On motion, counsel asserted that the applicant was injured in an automobile accident on the way to her removal hearing and had to be taken to the emergency room at a local hospital for treatment of her injuries. Counsel submitted medical documents from VillaView Community Hospital in San Diego, California. Counsel requested that the matter be re-opened and a new master calendar hearing be scheduled. The motion was granted, and an Immigration Judge in San Diego, California, once again ordered the applicant removed to Somalia in absentia on November 30, 2000. On December 6, 2000, the District Director, San Diego, California, issued a Form I-205, Warrant of Removal/Deportation. On February 6, 2001, the District Director, Atlanta, Georgia, issued a notice ordering the applicant to report to the Atlanta District Office on March 13, 2001, for removal to Somalia. The applicant did not appear at the Atlanta District Office for removal to Somalia as ordered.

On March 16, 2001, counsel for the applicant filed a Form I-246, Application for Stay of Deportation, with the Atlanta District Office. The District Director, Atlanta, denied the application on March 27, 2001, because counsel failed to submit all the required documentation in support of the application for stay of deportation. On April 2, 2001, counsel for the applicant filed a motion to reopen the applicant's removal proceeding with the Office of the District Counsel, San Diego, California. On January 11, 2002, the Immigration Judge in San Diego, denied the applicant's motion to reopen the in-absentia removal order because it was untimely filed, and because counsel failed to establish ineffective assistance of the applicant's prior counsel.

On February 13, 2002, counsel for the applicant filed an appeal with the BIA. The BIA dismissed the appeal on June 10, 2003, because the applicant, who had purportedly left Somalia more than 10 years ago, had not demonstrated that there was a basis for her asylum claim that could not have been asserted at her November 2000 hearing, and because the applicant failed to demonstrate that she was eligible for previously unavailable relief. The BIA further found that the applicant's motion to reopen failed to satisfy either the rescission requirements or the general motion requirements that apply in removal proceedings, and affirmed the Immigration Judge's final removal order dated January 11, 2002.

As previously stated, the applicant did not file her Form I-821, Application for Temporary Protected Status, until April 2, 2004, almost ten months after the issuance of the BIA dismissal decision. In order to qualify for late initial registration based on a pending application for asylum or for withholding of removal, the applicant must establish that she filed her initial TPS application within 60 days of the date such proceeding terminated. In this case, the applicant did not file her initial TPS application until almost ten months after the BIA dismissed the applicant's appeal from the final removal order dated January 11, 2002.

On appeal, counsel asserts that the applicant did not receive the BIA decision until the end of March 2004. Counsel states that the applicant filed her initial TPS application within 60 days of the date she actually received a copy of the BIA decision. Counsel has previously stated that the applicant's former attorney never received a copy of the BIA decision because he had changed his address. Counsel explained that when the applicant hired his firm to represent her, he was able to obtain a copy of the BIA decision in late March 2004. Counsel asserted that if the applicant had received the BIA decision when it was issued, she would have filed her initial TPS application within 60 days of the issuance of that decision. Counsel submits a photocopy of his letter dated March 18, 2004, addressed to the Clerk's Office, Board of Immigration Appeals, Falls Church, Virginia, requesting a copy of the BIA decision entered in June 2003.

Even if the applicant's former attorney changed his address, it is reasonable to expect that he would have arranged to have mail addressed to his former business address forwarded to him at his new business address. It is the applicant's responsibility to ensure that she receives copies of decisions regarding applications or proceedings before CIS. Counsel's statements do not overcome the fact that the applicant failed to file her application within 60 days of the termination of her removal proceeding. The applicant has not submitted sufficient evidence to establish that she 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.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to affirmatively establish her identity and nationality. Pursuant to 8 C.F.R. § 244.9(a)(1), each application must be accompanied by evidence of the applicant's identity and nationality. Acceptable evidence in descending order of preference may consist of the alien's passport, a birth certificate accompanied by photo identification, and/or any national identity document from the alien's country of origin bearing photo and/or fingerprint. If these documents are unavailable, the applicant must 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 he or she feels would be helpful in showing nationality.

The applicant has submitted the following documents in an attempt to establish her identity and nationality:

1. a personal Affidavit of Birth attesting that she was born in Mogadishu, Somalia, on July 14, 1978;
2. an affidavit dated March 17, 2001, from [REDACTED] attesting that he and the applicant were neighbors as children in Mogadishu, Somalia;
3. an affidavit dated March 27, 2001, from [REDACTED] attesting that he or she was present "at the hospital" when the applicant was born, and that the applicant's mother and his or her mother were friends and neighbors.

The applicant has provided only a personal affidavit and two affidavits from acquaintances to establish her identity and nationality. She has not provided any documents to establish unsuccessful attempts to obtain identity documents from the Embassy of Somalia or explaining why she was unable to obtain such documents. A search of CIS nonimmigrant computer records reveals no record of the applicant's purported arrival at New York, New York, in October 1999. In view of the foregoing, it is concluded that the applicant has not affirmatively established her identity and nationality as described at 8 C.F.R. 244.9(a)(1). Therefore, the application also must be denied for this reason.

It is noted that the applicant filed a Form I-601, Application for Waiver of Ground of Excludability, with the Atlanta District Office on April 2, 2004. There is no indication that the application has been adjudicated to date.

Finally, it is noted that the record contains an outstanding warrant of removal issued by the District Director, Atlanta, Georgia, on December 6, 2000.

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.

**ORDER:** The appeal is dismissed.