



U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy

*MI*

[REDACTED]

FILE:

[REDACTED]

OFFICE: California Service Center

DATE: MAR 13 2007

consolidated herein]  
[WAC 06 007 70268]

IN RE:

Applicant:

[REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

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 Director, California Service Center (CSC). It is now on appeal before the Administrative Appeals Office (AAO). The matter will be remanded to the director for the entry of a new decision.

The applicant is a 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 on the ground that the applicant failed to establish she registered for TPS during the initial registration period or was eligible for late registration.

On appeal counsel asserts that the applicant initially filed a timely late registration for TPS in 2003, but that the CIS (Citizenship and Immigration Services) office where it was filed failed to act thereon, and that the current application filed in 2005 “should have been accepted *nunc pro tunc* to the original filing date.” Counsel also asserts that CIS should apply the doctrine of equitable tolling to the applicant’s second TPS application, finding it timely, because her previous attorney failed to notify her of the 60-day deadline to file a TPS application after her asylum request was denied judicial review.

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 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.

Somalia was originally designated as a state whose nationals are eligible for TPS in September 1991, and it was re-designated for TPS on September 4, 2001. Nationals of Somalia applying for TPS must demonstrate continuous residence and physical presence in the United States either since the original registration period, which ran from September 16, 1991, to September 16, 1992, or since the second registration period, which ran from September 4, 2001, to September 17, 2002.

The record reveals that the Form I-821, Application for Temporary Protected Status, currently before the AAO on appeal was filed with the Citizenship and Immigration Services (CIS) office in Laguna Niguel, California, on October 7, 2005. On July 13, 2006, the director denied the application on the ground that it was not filed during the initial registration period in 1991-1992, or the re-designation registration period in 2001-2002, and did not qualify for late registration under 8 C.F.R. § 244.2(f)(2) and (g).

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or she met at least one of the conditions described in 8 C.F.R. § 244.2(f)(2) above and that the application was filed with 60 days of the end of the qualifying condition.

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. *See* 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. *See* 8 C.F.R. § 244.9(b).

The record shows that the applicant filed a Request for Asylum in the United States (Form I-589) on August 30, 1999. The request was referred to an Immigration Judge in November 1999, who denied asylum on July 21, 2000. The decision was appealed to the Board of Immigration Appeals (BIA), which likewise denied asylum on March 31, 2003.

The applicant then submitted a TPS application to the DHS (Department of Homeland Security) office in Los Angeles, California, which was stamped as received on April 15, 2003, accompanied by a fee of \$50.00. Though the stamp indicates that the application was accompanied by a payment of \$50.00, there is no evidence on the

form or elsewhere in the record that the Form I-821 was transferred to the California Service Center in Laguna Niguel for adjudication.

Meanwhile, the applicant petitioned the U.S. Court of Appeals for the Ninth Circuit to review the BIA's denial of her asylum request. In a memorandum decision filed on March 4, 2005, the court denied the petition for judicial review. The court's mandate was issued on April 26, 2005.

According to counsel, the applicant did not immediately receive the court's ruling because her previous attorney mailed it to the applicant's old address. Counsel states that the applicant did not learn about the Ninth Circuit decision until September 15, 2005, after which she filed her current TPS application with the California Service Center on October 7, 2005. By decision dated July 13, 2006, however, the director denied the application because it was not filed during the re-designation registration period of September 4, 2001 to September 17, 2002, or within 60 days of the end of the qualifying condition for late registration under 8 C.F.R. § 244.2(f)(2), as required under 8 C.F.R. § 244.2(g).

On appeal counsel asserts that CIS should exercise its discretion to accept the applicant's current TPS application *nunc pro tunc* to the filing date of the original TPS application submitted to the DHS office in Los Angeles in April 2003, which would make it a timely filed late registration under the provisions of 8 C.F.R. § 244.2(f)(2) and 8 C.F.R. § 244.2(g). Alternatively, counsel asserts that CIS should apply the doctrine of equitable tolling to the current TPS application to find it timely filed because of the former attorney's failure to notify the applicant in a timely manner of the 60-day window prescribed in 8 C.F.R. § 244.2(g) to file a TPS application after the Ninth Circuit denied her petition for judicial review of the asylum request.

The AAO determines that the California Service Center should have treated the applicant's initial Form I-821, submitted to the DHS Los Angeles office in April 2003, as timely filed. The stamp on the form records the date of receipt as April 15, 2003, for a fee of \$50.00, and the record includes the photocopies of two receipts of "USDHS Los Angeles," dated April 15, 2003, confirming that the office had received \$50.00 from the applicant for her Form I-821, in addition to another \$50.00 for the receipt of a Form I-821 for her daughter, [REDACTED]

[REDACTED] Having received the filing fees for the two applications, the DHS Los Angeles office should have forwarded the two applications to the California Service Center in nearby Laguna Niguel for adjudication. Accordingly, the AAO will treat the applicant's TPS application as having been constructively filed on April 15, 2003. As that date was within 60 days of the denial of the applicant's asylum request by the BIA (and two years before the Ninth Circuit's denial of the petition for judicial review), the TPS application satisfies the conditions prescribed in 8 C.F.R. § 244.2(f)(2) and 8 C.F.R. § 244.2(g) for late registration.

The AAO notes that the record includes a Form I-601, Application for Waiver of Ground of Excludability, that was filled out by the applicant and submitted in support of her second TPS application in May 2006. The application does not appear to have been adjudicated by the director. There is no decision thereon in the record, and the only indication that it was reviewed is a handwritten notation in the lower right corner of the form stating that it was denied on July 13, 2006, which is the same date the TPS application was denied.

In light of the foregoing discussion, the director's decision will be withdrawn. The case will be remanded for further consideration and the entry of a new decision.

As always in these proceedings, the applicant bears the burden of proof. *See* section 291 of the Act. 8 U.S.C. § 1361.

**ORDER:** The director's decision of July 13, 2006 is withdrawn. The case is remanded to the director for further action consistent with the above and the entry of a new decision.