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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
[SPM 05 012 00005]

OFFICE: Bloomington, Minnesota

DATE: **APR 03 2008**

INRE: 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

**Robert P. Wiemann**, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Bloomington, Minnesota. The application is now before the Administrative Appeals Office (AAO) 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 submit requested court documentation relating to his criminal record.

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 applicant who is a national of a foreign state 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.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

*Felony* means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

*Misdemeanor* means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 244.1.

A Federal Bureau of Investigation (FBI) fingerprint results report reveals the following:

- (1) On January 13, 2003, the applicant was arrested by the Police Department, in Hurst, Texas, and charged with "Theft >=\$1,500 <\$20K"and,
- (2) On July 6, 2004, the applicant was arrested by the Police Department, Sioux Falls, South Dakota, and charged with "Fug From Justice Texas."

On March 21, 2005, the applicant was requested to submit the final court dispositions for the charges detailed above. The applicant was also requested to submit evidence to establish his qualifying continuous residence and continuous physical presence in the United States. The applicant responded to the director's request with additional documentation regarding his residence in the United States; however, he failed to provide the requested final court dispositions of his arrests. The director, therefore, denied the application on September 2, 2005.

On appeal, the applicant states that he was not convicted of theft because the court dismissed the action against him. The applicant also provides copies of previously submitted documents. The applicant also provided copies of two certificates from the Fifth Judicial District court of the County of Lyon, Texas, reflecting that the applicant was convicted of "No Minnesota Driver's License" on May 4, 2004, and on December 8, 2004; and a Motion to Dismiss filed with the Tarrant County, Texas court dated February 28, 2005.

However, the applicant has failed to provide the necessary information in order to determine his eligibility for TPS based on his criminal history as detailed in Nos. 1 and 2 above. It is also noted that the applicant pleaded guilty to "Failure to Maintain Financial Responsibility" on April 9, 2003, at the City of Eules, Tarrant County, Texas.

Beyond the decision of the director, it also is noted that 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 applicant has not provided evidence to establish that he is a national or citizen of Somalia. Therefore, the application will also be denied for this reason.

The applicant is ineligible for temporary protected status because of her failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Therefore, the director's decision to deny the application for TPS is affirmed.

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.