

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M₁



FILE: [REDACTED]
[EAC 08 123 70257]

Office: VERMONT SERVICE CENTER

Date:

OCT 14 2009

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, 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 determined that the applicant failed to establish she: 1) had continuously resided in the United States since September 4, 2001; and 2) had been continuously physically present in the United States since September 4, 2001. The director also determined that the applicant failed to establish her nationality.

On appeal, counsel for the applicant states that the applicant submitted evidence that clearly establishes her nationality and her presence and residency in the United States during the requisite periods.

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 as 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 section 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 conditions 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.

Persons applying for TPS offered to Somalians must demonstrate that they have continuously resided in the United States since September 4, 2001. On August 9, 2001, the Attorney General announced an extension of the TPS designation until September 17, 2002. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until March 17, 2011, upon the applicant's re-registration during the requisite period.

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 United States Citizenship and Immigration Services (USCIS). 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 first and second issues in this proceeding are whether the applicant has established her continuous residence and continuous physical presence in the United States since September 4, 2001.

In support of her TPS application, the applicant submitted statements from [REDACTED] of Seattle, [REDACTED] and [REDACTED]; a copy of a lease agreement that begins on August 1, 2004; birth certificates of the applicant's children with dates of birth on July 11, 2004 and July 17, 2007; and a lease dated October 1, 2007.

On September 10, 2008, the applicant was provided the opportunity to submit evidence establishing her nationality and identity, and her continuous residence and continuous physical presence in the United States from September 4, 2001 to the date of filing the application. The applicant, in response, provided affidavits from [REDACTED] and [REDACTED] who attest to her residence in the United States and a State of Washington Driver License. The director determined that the applicant had not submitted sufficient evidence to establish continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

On appeal, counsel states that the applicant submitted sufficient evidence to show that she maintained continuous residence and continuous physical presence in the United States during the qualifying periods.

[REDACTED] states that the applicant was a volunteer for her organization in 2001 and 2002. [REDACTED] states that the applicant worked as a volunteer for his company. However, these statements fail to indicate the exact dates that the applicant volunteered. [REDACTED] states that he has known the applicant since 2003, and [REDACTED] states that the applicant lived with him from July 2002 through May 2003. Therefore, they can only testify to her residence since those dates. In addition, [REDACTED] states that the applicant lived with his family from December 1999 to July 2002, but he does not state the address where the applicant resided during that period. In addition, these statements are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Consequently, these statements have little evidentiary weight or probative value in determining whether the applicant has met the continuous residence and continuous physical presence requirements for TPS.

The applicant submitted a personal statement in which she testified that she entered the United States on December 13, 1999 and applied for asylum December 24, 1999. She stated that at the time she submitted her asylum application, she lived at [REDACTED]¹ and she continued living at that address until July 2002. Yet, the applicant submitted a copy of an identification card issued in Washington State on January 12, 2002, which shows her address as [REDACTED] ([REDACTED]). According to the applicant's statement, she did not move to Tukwilla, Washington until May 2003. The applicant also provided a copy of a Washington State driver's license, issued on May 28, 2003, which shows her address as [REDACTED].

According to the applicant's statement, she moved back and forth between California and Washington State between December 2000 and May 2003, until "my fiancée at the time, [REDACTED] convinced me to marry him and go back to Minneapolis with my husband, [REDACTED]." The applicant stated that she and her husband, [REDACTED] moved to [REDACTED], their first address in Plymouth, Minnesota, in July 2003, and they remained at that location for one year, until August 2004. The applicant indicated that she had submitted a copy of a "lease agreement for this residency," however;

¹ This address is shown on the applicant's Form I-589, Application for Asylum and Withholding of Removal, signed on December 24, 1999.

the record does not contain a copy of a lease agreement for that period. The record does contain a copy of the first page of a Lease Agreement for [REDACTED], which has discrepancies. The first page of the Lease Agreement indicates that it is for a month-to-month lease agreement for the premises at [REDACTED], Apartment Number [REDACTED] commencing August 1, 2004, between [REDACTED] and [REDACTED] and [REDACTED].

The Lease Agreement form indicates that the submitted page is "Page 1 of 6," however, the applicant did not submit a copy of the entire lease, including the signature page, or a page showing the date the Lease Agreement was signed. Moreover, the printer's mark on this Lease Agreement shows [REDACTED] - Rev 10/06." There is also a printed notation under the printer's mark with the date "Monday, January 07, 2008." It is not clear how the Lease Agreement for the lease of an apartment commencing on August 1, 2004 could have been written on stock that was revised in October 2006. Therefore, this document must be considered unreliable.

The applicant stated on her Form I-821 that she is single, and she did not provide any information on Page 2, Part 3, in response to the question to identify a spouse or former spouse. However, as stated above, the applicant's personal statement makes several references to her husband, [REDACTED]. According to the applicant's statement, she and [REDACTED] married sometime between May and July 2003, however, she did not provide a copy of a marriage certificate or any statement from [REDACTED] attesting to her residence in the United States. This discrepancy has not been explained.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish her continuous residence and continuous physical presence in the United States during the requisite period. Consequently, the director's decision to deny the application for temporary protected status on these grounds will be affirmed.

The third issue in this proceeding is whether the applicant has established her nationality and identity.

As stated above, the applicant was requested on September 10, 2008 to submit evidence establishing her nationality and identity. In response, the applicant submitted statements from [REDACTED] and [REDACTED] who state that they have known the applicant since she was born and know the applicant is a Somali native. The director concluded that the applicant had failed to establish her nationality and denied the application. On appeal, counsel states that all civil authority ceased to exist in Somalia in 1990, therefore rendering her unable to obtain a birth certificate. The applicant did not explain whether or not a birth certificate had been issued to her family between the time she was born in 1974 and 1990.

8 C.F.R. § 244.9(a) provides

(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:

- (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 fingerprint.

The applicant has not met the requirements set forth in this section. While she has submitted affidavits from individuals who attest to being present at or near the time of her birth, she has not presented any evidence as to any unsuccessful efforts on her part to obtain identity documents, and an explanation why the consular process is unavailable to her. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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.