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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M₁

[REDACTED]

DATE: **JUL 22 2011**

Office: DENVER

FILE [REDACTED]

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and action.

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 his nationality. The director, therefore, denied the application.

On appeal, counsel asserts that the applicant has provided sufficient evidence to establish he is a national of Somalia. Counsel submits additional evidence indicating that the applicant is a native of Somalia and documenting the applicant's attempts to obtain official documentation from Somalia.

Pursuant to section 244(c) of the Act, an alien who is a national of a foreign state designated under subsection (b) of this section (or in the case of an alien having no nationality, is a person who last habitually resided in such designated state) and who meets the requirements of subsection (c) of this section, may be granted temporary protected status (TPS) in the United States. Further, 8 C.F.R. § 244.2(a) provides that an alien who 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, may, in the discretion of the director, be granted TPS. Section 101(a)(21) of the Act defines the term "national" to mean a person owing permanent allegiance to a state.

The regulation at 8 C.F.R. § 244.9(a)(1) provides that 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.

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 AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reflects that the applicant entered the United States on September 10, 1998, with a Kenyan passport issued in the [REDACTED]. Thus, the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for fraudulently or willfully

misrepresenting a material fact. However, such ground of inadmissibility may be waived pursuant to section 244(c)(2)(ii) of the Act; 8 C.F.R. § 244.3(b). The record contains a Form I-601, Application for Waiver of Grounds of Inadmissibility, filed on March 28, 2005, that remains unadjudicated.

On April 7, 2005, the applicant was provided the opportunity to submit evidence establishing his efforts to obtain a passport from Somalia. The applicant, in response, provided evidence in an attempt to establish his nationality. The director, in denying the application on April 25, 2005, determined that the applicant failed to establish that he is a national of Somalia.

On appeal, counsel submits affidavits from individuals who attest to the applicant's nationality and marriage. The applicant also submits affidavits from [REDACTED]

According to [REDACTED] there is now no official government in Somalia and that since the collapse of the government, all civil records such as birth certificates, death certificates, passports, marriage certificates, divorce certificates, national I.D. cards, driver licenses, title deeds, and motor vehicle registrations were either looted or destroyed. [REDACTED] stated that all Somali civil records including marriage, birth, death and divorce certificates, school records and governmental properties which house these documents, were either destroyed or looted during the civil war and there are absolutely no civil records in Somalia. According to [REDACTED] the applicant has therefore been unable to produce any official documentation since 1991. The record also contains numerous affidavits attesting to the applicant's nationality. The applicant has affirmed that he is a national of Somalia and provided, as required by the Act, evidence of his attempts to obtain further proof of his nationality and the reasons why the consular process is unavailable.

The applicant has submitted sufficient evidence to establish that he has met the criteria described in 8 C.F.R. § 244.2(a) regarding his nationality. Therefore, the applicant has overcome the sole basis for the denial of the application. However, the applicant has not established his identity, the validity period of the applicant's fingerprint check has expired, and the Form I-601 has not been adjudicated.

The case will be remanded in order for the applicant to provide evidence to establish his identity. Evidence such as state identity documents, driver's license, military identity documents or public educational documents are acceptable forms of identity. If documentation is unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documentation. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity. *See* 8 C.F.R. § 244.9(a)(1).

The case will be remanded for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Following completion of this requirement, the director will render a new decision. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i), and the applicant shall be permitted to file an appeal without fee.

The case will be remanded for the adjudication of the Form I-601. Following completion of this requirement, the director will render a new decision. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS. An adverse decision on the waiver application may be appealed to the AAO.

ORDER: The case is remanded to the director for further action consistent with the above.