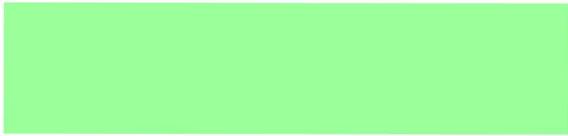


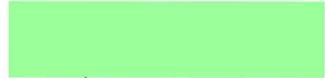


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 03 2014** Office: ST. PAUL FIELD OFFICE

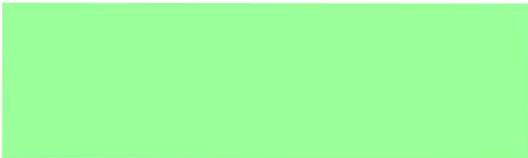


IN RE: Applicant:



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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application for Temporary Protected Status was denied by the Director, St. Paul Field Office. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Somalia who is applying for 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 for TPS because the director determined that the applicant had not established that he was eligible for late initial filing.

On appeal, counsel for the applicant asserts that the applicant had an application for asylum pending at the time he filed his TPS application, and that he is, therefore, eligible for late initial filing pursuant to 8 C.F.R. § 244.2.

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 Secretary 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)

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. There have been several extensions of TPS for Somalia, including the extension for the period from September 4, 2011 through September 17, 2012.¹ The applicant submitted the instant TPS application on October 13, 2010.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above. If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

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 U.S. 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 record reveals that the applicant first filed for TPS in October 2005, under receipt [REDACTED]. The application was denied on August 10, 2006 because the applicant did not establish eligibility for late initial registration. The applicant filed a second TPS application, under receipt [REDACTED] on May 4, 2008, which was denied on August 13, 2008, again for failing to establish eligibility for late initial registration. The Form I-821, Application for Temporary Protected Status, currently before the AAO on appeal, was filed on October 13, 2010. On February 27, 2012, the director denied the application on the ground that it was not filed during the initial registration and the applicant did not qualify for late registration under 8 C.F.R. § 244.2(f)(2) and (g).^{2, 3}

¹ Somalia was re-designated for TPS on September 18, 2012 with an expiration date of September 17, 2015.

² The AAO notes that the record includes an adjudicated Form I-601, Application for Waiver of Grounds of Inadmissibility, that was completed by the applicant and submitted on December 20, 2011 under receipt MSC [REDACTED] and an adjudicated Form I-821, Application for Temporary Protected Status, filed on July 18, 2012, under receipt [REDACTED]. The Form I-821 and Form I-601 should be expeditiously returned to the Vermont Service Center for adjudication of the applications.

In the February 27, 2012 denial decision, the director stated that the attorney for the applicant had submitted a brief with the Form I-821 application in which counsel asserted that the applicant should be considered within the provisions for TPS late initial filing because he was filing the application within 60 days of the expiration of one of the qualifying conditions, as his application for asylum was still pending. As pointed out by the director, the applicant's asylum application was denied on August 16, 2000 by an Immigration Judge because it was determined that the applicant had filed a frivolous asylum application, and his appeal to the Board of Immigration Appeals (BIA) had been dismissed due to his failure to timely submit a brief or statement regarding the appeal. While evidence in the record indicates that an Immigration Judge subsequently administratively closed proceedings in order that the applicant could apply for TPS, this occurred on September 11, 2012, well after the 60-day period following expiration of one of the qualifying conditions.

While the director stated in the February 27, 2012 denial that the applicant was not eligible for late registration, he also noted that the applicant currently has "a finding by an immigration Judge of a frivolous asylum claim based on the submission of false documents used to prove his identity that may bar him from any future benefits including TPS pursuant to 8 C.F.R. 208.20. The director noted that the same documents were submitted to establish his identity for TPS eligibility and that "while the Form I-821 was not denied pursuant to 8 C.F.R. 208.20, it appears this issue may impact future filings."

The applicant has not met the late registration requirements of 8 C.F.R. § 244.2. and therefore is not eligible for TPS. Consequently, the director's decision to deny the application is affirmed.

³ In connection with the TPS application filed on July 18, 2012, the Director, Vermont Service Center, sent a Form I-797 to the applicant on November 8, 2012, requesting that he submit additional evidence to prove nationality and identity; an explanation for the discrepancy between information provided on the Form I-821 that he had last entered the United States on October 20, 2009 and his statement in a personal affidavit that he had entered the United States using false documents on or about October 20, 1999 and had never left the United States; copies of his passport and all passport pages and the arrival-departure record, Form I-94, he used to enter the United States; certified criminal history reports, and a list of every name and alias he had used in the United States. Finally, the director stated that USCIS records show the applicant had been scheduled for a hearing before an Immigration Judge on September 11, 2012, and requested that he provide a copy of the decision rendered by the Immigration Judge.

The record reflects that the applicant responded to the request and provided the requested documentation on January 29, 2013 along with his attorney's brief. The Form I-601 was received on December 20, 2013 along with additional evidence including partial pages of a transcript from an immigration hearing, identification cards, affidavits and certified criminal history reports.

(b)(6)

NON-PRECEDENT DECISION

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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.