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U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: DEC 08 2014

Office: VERMONT SERVICE CENTER

[Redacted]

IN RE: Applicant:

[Redacted]

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

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be 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. On January 31, 2014, the director denied the application because it was determined that the applicant had firmly resettled in another country prior to arriving in the United States.

On appeal, counsel asserts that the applicant is eligible for the benefit sought as he did not firmly resettle in Canada. Counsel states that the applicant has shown through clear and convincing evidence that he is a national of Somalia, and that it is the applicant not his mother who was born in

An alien shall not be eligible for TPS if the Attorney General, now the Secretary, Department of Homeland Security (Secretary), finds that the alien was firmly resettled in another country prior to arriving in the United States. Sections 244(c)(2)(B)(ii) and 208(b)(2)(A)(vi) of the Act.

As defined in 8 C.F.R. § 208.15, an alien is considered to be firmly resettled if, prior to arrival in the United States, he or she entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement unless he or she establishes:

(a) That his or her entry into that country was a necessary consequence of his or her flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that country; or

(b) That the conditions of his or her residence in that country were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled. In making his or her determination, the asylum officer or immigration judge shall consider the conditions under which other residents of the country live; the type of housing, whether permanent or temporary, made available to the refugee; the types and extent of employment available to the refugee; and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation that includes a right of entry or reentry, education, public relief, or naturalization, ordinarily available to others resident in the country.

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants must submit all documentation 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The AAO conducts appellate review on a *de novo* basis. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The record reflects that in 1999 the applicant filed a Form I-589, Application for Asylum and Withholding of Removal, under the name [REDACTED]. The applicant was granted asylum in the United States on February 25, 2000. On June 7, 2005, the applicant's asylum was terminated as it was revealed that the applicant had obtained said status through the use of fraud. Information from Canadian immigration revealed that prior to filing the Form I-589, the applicant had obtained immigrant status and Canadian citizenship under another name. *Decision of Chicago Asylum Office Director*, dated January 11, 2012. During his termination interview for asylum, the applicant indicated that he had entered the United States in 1999 by presenting his Canadian citizenship card.

On October 29, 2012, the applicant filed a TPS application under the name [REDACTED] and indicated that he was a citizen of Somalia and Canada. The applicant provided a copy of his Canadian passport issued on March 16, 2001.

On April 12, 2013, a notice was issued advising the applicant that USCIS records indicated that he had resided in Canada from 1988 to 1999. The applicant was requested to provide all his addresses and length of time at each address prior to his entry into the United States. The applicant was requested to provide an explanation of his immigration status in that country; whether he had lawful permission to be in that country; whether the permission was temporary or permanent; the reasons for being in that country; the reason for leaving; whether he was a refugee from another country; whether he had the same privileges provided to other persons who lived permanently in the country; and reasons why he did not consider himself to have been firmly resettled in the country before entering the United States.

The applicant was also requested to submit copies of all his passports (current and expired) showing entries and departures; records establishing citizenship of any other country than Somalia; and visas, residence cards or other immigration documents from any country other than the United States where he had resided; and evidence indicating he was not permitted to enjoy the same privileges provided to other persons who lived permanently in the same country where he resided.

Counsel, in response, indicated that the applicant arrived in Canada after fleeing Somalia; that he remained in Canada as he could not return to Somalia and had no other means to depart the country; that he did not establish ties to Canada and had only returned once in the last fourteen years for a brief visit¹; that although he was granted a waiver, he was never granted asylum or refugee status and was never able to reunite with his family; that he was granted Canadian citizenship, "but by that time he was unable to reunite with his family because they resided in the United States"; and that

¹ USCIS records reflect that the applicant was in Canada in March 2001 during the period his Canadian passport was issued.

the conditions of his residency in Canada were so restricted that he was not in fact firmly resettled in Canada.

The applicant provided a copy of his Record of Landing issued by the Canadian government on May 27, 1992. The document indicated the applicant's original entry date into Canada as December 30, 1988; that no terms and conditions were imposed; and that the applicant was granted a waiver for immigrant resident status.² In his affidavit, the applicant indicated, in pertinent part, "[t]he humanitarian grounds did give me permanent permission to be in the country and I was given the same privileges provided to other persons who live in Canada permanently, but was not able to reunite with my family because of so many restrictions to bring family members."

The director determined that during his residence in Canada, the applicant was allowed the same rights and privileges of any Canadian citizen as he was allowed to go to school, work and obtain Canadian citizenship. The director noted that based on his Canadian citizenship, the applicant had the right to freely travel to and from Canada to visit family in the United States. Based on the foregoing, the director concluded that the applicant had been firmly resettled in Canada and, therefore, he was ineligible for TPS under section 244 of the Act.

Counsel's brief on appeal and the authorities cited therein have been reviewed. However, we have determined that the applicant was not substantially and consciously restricted by the authority of Canada as he became a naturalized Canadian citizen, who resided there for 11 years, attended school in Canada³ and had the ability to travel to and from Canada. These facts are sufficient to support a finding that the applicant had firmly resettled in Canada within the meaning of section 208(b)(2)(A)(vi) of the Act and 8 C.F.R. § 208.15. The applicant does not demonstrate that the conditions of his stay in Canada met those described in 8 C.F.R. § 208.15(a) and (b), as required to establish that he was not permanently resettled in that country prior to his arrival in the United States. Consequently, the director's decision to deny the TPS application on this ground will be affirmed

The applicant has also presented a copy of a biographical page of a Somali passport which was issued in Dubai on August 20, 2012. The director, however, has questioned the applicant's true nationality as he had claimed to have been born in Jiggiga which is located in Ethiopia. The director also noted that the applicant's school record indicates that his mother was born in Ethiopia. A review of the English translation of the school record, however, does not support this finding. The school record certified that [REDACTED] was born in [REDACTED] and only listed the name of his mother. Therefore, the director's finding that the applicant's mother was born in Ethiopia will be withdrawn. However, no contemporaneous evidence has been submitted to dispute the director's finding that [REDACTED] is located in Ethiopia and not Somali. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing

² Section 9 (1) of the Immigration and Refugee Protection Act.

³ At the time of his interview of October 5, 2012 for Form I-130, Petition for Alien Relative, the applicant indicated that he obtained an engineer certificate from [REDACTED] Canada.

Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, we concur with the director's findings that based on the applicant's misrepresentation at the time of filing his Form I-589 in 1999 and because there has not been a functioning government or competent civil authority in Somalia since 1991, USCIS is unable to verify the authenticity of the passport issuing post from Dubai. It is noted that the immigration judge, in her order administratively closing the case on September 24, 2012⁴ indicated that it "appears" from the record that the respondent is from Somalia and "may be" eligible to register for TPS. Likewise, the Form I-862, Notice to Appear, indicates that [USCIS] "alleges" that the applicant is a native of Somalia.

In the alternative, even if the applicant has established his nationality to be that of a country that is a designated foreign state under section 244(b) of the Act, the applicant would remain ineligible for benefit sought due to his ineligibility under 8 C.F.R. § 208.15.

An alien applying for TPS has the burden of proving that he 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.

⁴ Administrative closing of a case does not result in termination of the proceedings. It is merely an administrative convenience, which allows the removal of cases from the calendar in appropriate situations. See *Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996).