



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: APR 03 2015

OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: [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:

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 Acting Center Director, Vermont Service Center denied the temporary protected status application (TPS) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the director for further action.

The Acting Center Director denied the application because the applicant failed to establish that he is a national of a foreign state designated by the Secretary, Department of Homeland Security (Secretary) and the applicant was firmly resettled in Kenya prior to arriving in the United States. Accordingly, the Acting Center Director determined that the applicant is not eligible for a grant of TPS under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a, and withdrew his TPS status. *Decision of the Acting Center Director*, dated March 6, 2014.

On appeal, counsel asserts that the applicant is a national and citizen of Somalia who was charged as such in immigration proceedings and previously granted TPS for over ten years. Counsel further asserts that the applicant did not receive sufficient notice of the intent to withdraw his TPS status so that he is entitled to an interview and opportunity to respond. Counsel contends that the applicant has provided sufficient documentation of his nationality and there is no evidence of his firm resettlement in Kenya.

In support of the application and appeal, the applicant submitted legal documents, prior applications, affidavits concerning his birth, identity documents and a statement from the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

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. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity of 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 original bearing photo and/or fingerprint.

The applicant indicated on his TPS application that he is a national and citizen of Somalia. Counsel for the applicant asserts that the applicant has been granted TPS based upon his Somali nationality and citizenship for over a decade and has been charged as such in immigration proceedings. It is acknowledged that the applicant was charged as a national and citizen of Somalia in immigration proceedings and was granted TPS based upon his nationality in previously submitted applications. The applicant does not make any assertions that we are bound by regulation or case law to continue to identify the applicant as a national of Somalia based upon previous determinations.

The U.S. Department of State, in its Somalia Reciprocity Schedule, states that civil documents from Somalia are unavailable, as the United States formally recognized the new government of Somalia on January 17, 2013, but there continues to be no recognized competent civil authority to issue these documents. Further, the government of Somalia ceased to exist in December of 1990 and the country underwent a civil war, in the course of which most records were destroyed, so that those records not destroyed are in the hands of private individuals or not retrievable.

Counsel for the applicant asserts that the applicant has submitted identity documents beyond what can be expected from a Somalian national, so that the Acting Center Director's findings concerning the applicant's insufficiency in demonstrating identity and nationality are incorrect and inconsistent with the regulations.

The applicant submitted a copy of an identification card identifying him as a citizen of Somalia. The applicant also submitted four affidavits from other individuals, two attesting to the applicant's birth in Somalia and the other two attesting to his membership in a clan. The Acting Center Director noted that one of the individuals attesting personal familiarity with the applicant's birth was himself born over fifteen years after the applicant. He further found that the Somali identification card was "incomplete and without any date." The Acting Center Director did not examine further why the documents were insufficient to prove nationality. The Acting Center Director also found numerous discrepancies related to the applicant's entry into the United States and determined that they call into question the applicant's identity, though it was not explained how these discrepancies were material to his identity.

Counsel asserts that the applicant did not receive notice that his TPS could be withdrawn so that the applicant should be given proper notice and an opportunity to respond. Counsel also contends that the applicant is entitled to an interview before a denial decision based upon his identity and has not been advised of the procedures for filing a waiver of inadmissibility.

8 C.F.R. § 244.2(a) requires that an applicant demonstrate that he is a national of a foreign state designated under 244(b) of the Act for TPS eligibility. 8 C.F.R. § 244.4 states that a personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. The applicant submitted a Somalian identification card and affidavits concerning his birth in support of his TPS application. However, as the applicant's identity document was found to be incomplete and a birth affidavit was submitted by an individual born after the applicant, the applicant was determined to have failed in providing documentary proof

of his identity or nationality. Accordingly, as the Acting Center Director found that the applicant failed to provide documentary proof of his identity or nationality, an interview of the applicant is required by 8 C.F.R. § 244.4.

An alien shall not be eligible for TPS if the Secretary, Department of Homeland Security, 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.

On appeal, counsel asserts that the applicant did not establish ties to Kenya and DHS has not satisfied its initial burden of making a prima facie showing of an offer of firm resettlement to the applicant. However, the burden of proof is upon the applicant to establish that the applicant meets the above requirements. Applicants must submit all documentation required in the instructions or requested by CIS. 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 the burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

In a Notice of Intent to Deny, the Acting Service Center Director requested a list of addresses at which the applicant resided after leaving his country of nationality and before entering the United States, information concerning the applicant's status in any country other than his country of nationality and the United States, records concerning the applicant's entry and residence in that country and any evidence concerning firm resettlement.

In response, the applicant submitted a rebuttal from counsel, a sworn statement, photocopies of his initial filing and a subsequent completion of those forms, marriage and divorce documents,

nationality and identity documents and documents concerning the applicant's prior immigration status.

The applicant indicated that he resided in Kenya with his family members for over nine years. During his asylum interview, the applicant asserted that he resided in Kenya with his family in two rooms, with the applicant and his wife and baby in one room, and the rest of his family members, including siblings, in the other. The applicant also stated that he worked illegally on vehicles, driving, washing and changing tires. The applicant has submitted further affidavits supporting his claim of Somalian nationality and has consistently asserted that he was forced to bribe Kenyan officials to reside within that country.

A U.S. Committee for Refugees World Refugee Survey. 1999 – Kenya, dated January 1, 1999, states that Kenyan officials have insisted for years that all refugees must live in designated camps to qualify for assistance and authorities classify Somalis living outside of camps as illegal aliens. As such, the applicant's assertions concerning his status while residing in Kenya, as a Somali national, are supported by U.S. Committee findings. Accordingly, if the applicant sufficiently evidences his Somalian nationality, he has satisfied his burden of demonstrating that he did not receive permanent resident status, citizenship, or some other type of permanent resettlement in Kenya.

The Acting Center Director, in his TPS denial decision, noted that the applicant, based upon his entry with the passport of another individual, may also be inadmissible under section 212(a)(6)(C)(i) of the Act. However, the Acting Center Director did not make a finding concerning the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act, stating only that the applicant may be inadmissible under this ground. If the applicant establishes his Somali nationality upon remand, he is to be advised as to any grounds of inadmissibility and any waivers available in accordance with 8 C.F.R. § 244.3.

As the applicant was determined to have failed in providing documentary proof of his identity or nationality, the matter will be remanded for arrangement of an interview at his local field office. If, after the interview his Somali nationality is confirmed, his TPS application shall be reopened and a new decision shall be issued discussing any issues of inadmissibility and possible waivers. If he cannot establish his Somali nationality his TPS application will remain withdrawn.

**ORDER:** The matter is remanded to the Acting Center Director for action consistent with the above.