



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 3 1 2015**

FILE #: [REDACTED]

APPLICATION RECEIPT #: [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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further action consistent with this decision.

On July 16, 2014, the 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 eligible for the granting of Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

On appeal, counsel asserts that the director has deprived the applicant of due process, as the applicant was not interviewed. Counsel contends that during an interview, the applicant would have presented secondary evidence helpful in establishing his nationality.

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 TPS in the United States.

The regulation at 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 record reflects the following:

- The applicant was admitted as a child refugee pursuant to section 207 of the Immigration and Nationality Act (the Act) on May 24, 2000. The refugee documents presented listed the applicant name as [REDACTED] born in Somalia on [REDACTED] 1985.
- On August 25, 2000, the applicant filed an Application for Replacement/Initial Nonimmigrant Arrival-Departure Document (Form I-102) and listed his date of birth as [REDACTED] 1982. The applicant submitted a copy of a birth certificate to corroborate the date of birth.
- On March 20, 2002, and March 11, 2009 the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) and listed his date of birth as [REDACTED] 1975.¹ The applicant submitted driver's licenses from the states of Washington (issued on January 9, 2002) and Ohio (issued on September 2, 2008), which list his date of birth as [REDACTED] 1975. The applicant also

¹ On March 16, 2009, the applicant through his counsel executed a letter in which he requested that the Form I-485 filed on March 20, 2002 be withdrawn. On or about May 8, 2009, the Form I-485 was withdrawn.

submitted an English translation of a birth certificate to corroborate the date of birth.

- On October 25, 2005, the applicant filed an initial Application for Temporary Protected Status (Form I-821), and listed his date of birth as [REDACTED] 1975. The applicant submitted a driver's license from the state of Ohio issued on October 25, 2003, which lists his date of birth as [REDACTED] 1975. The applicant also submitted an English translation of a birth certificate to corroborate the date of birth.
- On September 12, 2012, the applicant filed the current Form I-821, and listed his date of birth as [REDACTED] 1975. The applicant submitted refugee travel documents issued by USCIS on February 23, 2004 and September 28, 2010, which list his date of birth as [REDACTED] 1985 and [REDACTED] 1975, respectively.

Based on the conflicting supporting documentation in the record and the applicant's statement submitted in response to the Notice of Intent to Deny dated July 18, 2013, the director determined that the applicant's nationality and identity had not been established. The director concluded that it was difficult to determine the facts based on the applicant's misrepresentations concerning his biographic information.

The regulation at 8 C.F.R. § 244.9(a)(1) provides, in part, 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.

The record does not reflect that the applicant has been interviewed. 8 C.F.R. § 244.9(a)(1). Therefore, the case will be remanded so that an interview can be scheduled in order to determine the applicant's nationality and identity.

The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS. The burden of proof rests with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

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