



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 3 1 2015**

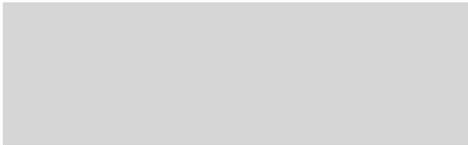
FILE #: [REDACTED]

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 September 5, 2014, the director denied the application because the applicant failed to establish her identity in order to be 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.

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, as defined in section 101(a)(21) of the Act, of a foreign 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.

The regulation at 8 C.F.R. § 244.9 provides:

- (a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.
 - (1) *Evidence of identity and nationality.* 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 or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing 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 origin bearing photo and/or fingerprint.

We conduct 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 the applicant applied for asylum under the name [REDACTED]. At the time of asylum interview on August 5, 1996, the applicant admitted that she traveled from Kenya to Holland to Mexico using a Swedish passport belonging to another woman with a last name of [REDACTED].

Between 1996 and 2006, using the identity of [REDACTED], the applicant obtained an identification card from the Commonwealth of Virginia on June 15, 1999, driver's licenses from the state of Minnesota in 1998 and 2006, a social security card and a refugee travel document issued by USCIS on March 21, 2006. The applicant traveled outside the United States and was admitted into the United States on March 8, 2002 under the name [REDACTED]. On July 20, 1998, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), and at the time of her interview on September 19, 2006, it was determined that the applicant was not the person she claimed to be.

Along with her Application for Temporary Protected Status (Form I-821) filed October 16, 2012, the applicant submitted:

- A Somali identification card with English translation in the name [REDACTED] and two notarized affidavits attesting to the applicant's birth in Somalia.
- A Minnesota driver's license issued in April 2010 in the name [REDACTED] with an [REDACTED] date of birth.
- The U.S. Department of State Country Reciprocity Schedule for Somalia, which indicates that there are no birth certificates available, and that there are no circumstances under which immigrant visa applicants can reasonably be expected to recover original documents held by the former government of Somalia.

Based on the evidence and testimony provided during her asylum and adjustment of status proceedings, the director determined that the applicant's nationality and identity had not been established. In a Request for Evidence dated February 1, 2013, the applicant was afforded an opportunity to submit additional documents to establish her nationality and identity. The applicant was advised to submit an affidavit showing proof of unsuccessful efforts to obtain

identity documents if they were not available. In response, the applicant resubmitted the Somali identification card along with an affidavit asserting that she no longer has any original documents to establish her nationality and identity.

On April 25, 2014, the applicant was interviewed by an immigration officer at the St. Paul Field Office in Minnesota. At the conclusion of the interview, it was determined that the applicant had established her nationality to be Somali. However, based on the discrepancies and inconsistent testimonies of the applicant, her true identity was found to be undetermined.

On appeal, the applicant asserts that she attempted to obtain a Somali identification card or passport through the [REDACTED], but was informed that it was impossible to obtain either document while in the United States. The applicant reiterates the statements made in her affidavit submitted in response to the Request for Evidence. The applicant resubmits the U.S. Department of State Country Reciprocity Schedule for Somalia. The applicant submits affidavits of identity from two acquaintances who assert that they have known her since birth and a letter from the executive director for [REDACTED] who attests to the applicant's Somali nationality. The applicant also submits a copy of a letter from the minister counselor, deputy permanent representative for the [REDACTED] who also attests to the applicant's Somali nationality.

The applicant has affirmed that she is a national of Somalia and provided, as required by the regulation, evidence of her attempt to obtain further proof of her identity and the reasons why the consular process is unavailable. 8 C.F.R. § 244.9(a)(1). The applicant asserted that she used the identification of another individual for official purposes. The record reflects that the applicant used the other individual's identity after she was ordered removed by an immigration judge under the name she claims is her true identity, [REDACTED]. We find that the applicant's explanation and documentation of record are sufficient to establish her identity. Therefore, the director's decision to deny the application on this ground will be withdrawn.

The applicant, however, is found to be inadmissible to the United States as an alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act. Section 212(a)(6)(C)(i) of the Act. As the applicant submitted a Form I-485, Application to Register Permanent Residence or Adjust Status, and received a travel document, both under the name of another individual, she willfully misrepresented a material fact to procure an admission or benefit under the Act.

A misrepresentation is generally material only if by it the alien received a benefit for which he/she would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is,

having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72.

Except as provided in clause (iii), the Secretary may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Section 244(c)(2)(A)(ii) of the Act. If an alien is admissible on grounds which may be waived, he or she shall be advised of the procedures for applying for a waiver of grounds of inadmissibility on Application for Waiver of Grounds of Inadmissibility (Form I-601). 8 C.F.R. § 244.3(b).

The record does not reflect that a Form I-601 has been filed. Therefore, the matter will be remanded so that the director may accord the applicant the opportunity to file a Form I-601 and thereafter shall adjudicate the Form I-601. 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.

The record also reflects that the validity period of the applicant's fingerprint check has expired. Therefore, the matter will also be remanded for the purpose of sending the applicant a fingerprint notification form, and affording her the opportunity to comply with its requirements. 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).

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. §1361.

ORDER: The director's decision is withdrawn. The matter is remanded for further action consistent with the above and entry of a new decision.