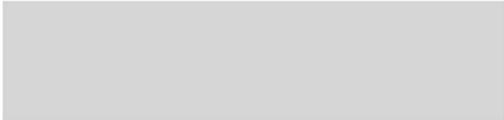




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: MAY 18 2015

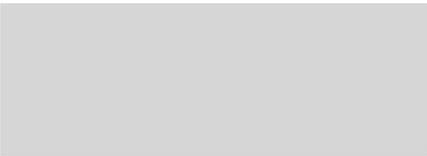
FILE #: [REDACTED]

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:



INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

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 appeal will be dismissed.

The applicant claims to be a native and 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. § 1254a.

The director denied the application because the applicant had been convicted of two misdemeanors in the United States. The director also denied the application because the applicant failed to establish his Somalia nationality or citizenship. *Decision of the Director* dated August 7, 2014.

On appeal the applicant asserts that he does not have two misdemeanor convictions because in a second misdemeanor referenced by the director there was no guilty plea or finding of guilt, thus no conviction. He also asserts that he has provided secondary sources of his citizenship and the U.S. government has already determined him to be a national of Somalia.

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 Temporary Protected Status 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) of this section.

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).

An alien shall not be eligible for TPS under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

“Misdemeanor” means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under the term “felony” of this section. For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 244.1.

The term ‘conviction’ means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

On September 16, 1991, the Attorney General designated Somalia for TPS. On May 1, 2012, the Secretary of Homeland Security announced an extension and re-designation through March 14, 2014, with the initial registration period for filing for TPS under this designation May 14, 2012,

through October 29, 2012.¹ The record reflects that the applicant submitted an application for TPS on November 23, 2012, and the application was accepted under 8 C.F.R. § 244.2(f)(2)(ii).

On June 27, 2013, the applicant was requested to submit certified judgment and conviction documents for all his arrests along with copies of police reports and any state statute that explains when charges can be dismissed after a guilty plea. The applicant was also requested to submit additional documentation to establish his Somalia nationality or citizenship. In response the applicant submitted records showing a 2000 conviction for Disorderly Conduct and for a 2006 charge of Interfere with Emergency Telephone Call. The director concluded that the applicant had not submitted police reports as requested or any state statute explaining when charges can be dismissed after a guilty plea, and determined the applicant had two misdemeanor convictions.

On appeal the applicant concedes that his [REDACTED] 2000, conviction under Minnesota Statute 609.72 for Disorderly Conduct is a misdemeanor. He also asserts that he withdrew a guilty plea for the charge of Assault, which was then dismissed. The applicant further asserts that he has no second misdemeanor conviction. The record reflects that on [REDACTED] 2006, the applicant was charged with Interfering with Emergency Telephone Call in violation of Minnesota Statute 609.78, a Gross Misdemeanor. The record further reflects that on [REDACTED], 2008, the disposition was amended with charges dismissed. The record does not reflect, however, that the applicant entered a plea of guilty or nolo contendere or that a judgment of guilt was entered against him. Records submitted by the applicant show a plea was entered related to other charges, but not related to his 2006 arrest. The record therefore reflects that the applicant has one misdemeanor conviction, under Minnesota Statute 609.72, which does not render him ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulation in 8 C.F.R. § 244.4(a).

We now turn to the question of whether the applicant has established that he is a national or citizen of Somalia, thus eligible for TPS. The director's decision states that the interviewing officer determined that there were significant inconsistencies between testimony given by the applicant on April 24, 2014, and prior testimony, that the applicant was not knowledgeable about claims related to his family or having grown up in Somalia, and that affidavits submitted attesting to his birth in Somalia were of little probative value. On appeal the applicant points out that the U.S. Department of State Reciprocity Schedule states that documents from Somalia are unavailable. He further notes that he has submitted affidavits attesting to his birth in Somalia and that documents issued by the U.S. government and State of Minnesota indicate his is a native and citizen of Somalia.

The record shows that on the applicant's 1996 asylum application and at his subsequent asylum interview, he claimed that in July 1993 he had fled from Somalia to Kenya where he was in a refugee camp for two and a half years, that he married in Kenya in 1994, that he remained in

¹ On November 06, 2013, the acting secretary of Homeland Security extended TPS for eligible nationals of Somalia for an additional 18 months, effective March 18, 2014, through Sept. 17, 2015.

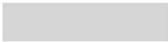
Kenya until November 1995, and that he entered the United States with a fraudulent passport on [REDACTED] 1995, at [REDACTED], NY. The applicant testified to the same information before an immigration judge in April and August 1997, although the immigration judge questioned the applicant's credibility. The applicant testified before the immigration judge that he had turned over the fraudulent passport to a smuggler to be reused. In a sworn statement before an U.S. immigration officer on October 14, 2002, the applicant stated that he had never lived in or obtained any status in any other country and that he had entered the United States on [REDACTED] 1995, with a fraudulent Kenyan passport that he threw in a bathroom at the airport in [REDACTED].

The record further reflects that it was subsequently discovered that the applicant had in fact entered Canada in August 1990, although he had claimed to have resided in and been persecuted in Somalia from 1991 to 1993 and then to have resided in Kenya from 1993 to 1995. On March 24, 2003, the applicant admitted before an immigration judge that he had been in Canada from 1990 to 1995. The applicant submitted a Biographic Information (Form G-325A) signed on February 1, 2010, and another signed August 12, 2011, indicating that he had lived in [REDACTED] Canada, from August 1991 until August 1996, although the form also indicates the applicant was married in Kenya on [REDACTED] 1994, with the marriage terminated on [REDACTED] 1996. The applicant submitted a statement dated August 9, 2013, also indicating that he arrived in Canada in August 1990.

Affidavits submitted to establish that the applicant was born in Somalia contain little detail to support their assertions and also contain inconsistencies, with one individual stating she was a relative of the applicant and later stating she was a neighbor and family friend. *See affidavits of [REDACTED] dated August 3, 2011 and July 6, 2013.* The affidavits indicate that the applicant was born in 1975, but other documentation submitted by the applicant concerning his refugee claim in Canada states he was born in 1973, and the applicant does not explain why he used two different dates of birth. We note that the applicant also submitted an affidavit dated August 2, 1999, from two individuals attesting to his [REDACTED], 1994, marriage in Kenya and his wife's death in Kenya on [REDACTED] 1996, with the affidavit stating that the individuals, a relative and a family friend, saw her body on the day of her death. The applicant later submitted a Certificate of Death purportedly issued by the Republic of Kenya stating that she died on [REDACTED] 1996, six months before the date provided by the two witnesses. As noted above, the record indicates that, contrary to these claims, the applicant was in Canada at that time and could not have been married in Kenya in 1994.

As noted, following an interview with the applicant on April 24, 2014, an immigration officer found that the applicant's testimony was significantly inconsistent with testimony given in prior interviews and that the applicant appeared to lack knowledge about his family and [REDACTED] Somalia, where he claimed to have grown up. We note here also that although the interviewing asylum officer determined the applicant credible overall when referring his application to immigration court in 1996, the officer noted it as unusual that the applicant knew no family history of his clan.

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NON-PRECEDENT DECISION

The U.S. Department of State Somalia Reciprocity Schedule indicates that documents are unavailable as there continues to be no recognized competent civil authority to issue civil documents, that most records were destroyed during the civil war, 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. Although not reasonably expected to obtain documents from Somalia, the applicant has not provided credible, probative evidence that he is in fact a national or citizen of Somalia, given the repeated inconsistencies in his own statements, including testimony in support of his asylum claim that proved to be fabricated, and inconsistencies and lack of detail in several affidavits submitted on his behalf.

The applicant has not established that he qualifies for TPS pursuant to section 244(c)(1) of the Act and 8 C.F.R. § 244.2(a), as he has not established that he is a national of a state designated under section 244(b) of the Act. Consequently, the director's decision to deny the application for TPS will be affirmed.

It is the applicant's burden to establish eligibility for TPS. 8 C.F.R. § 244.9(a)(3). Here, that burden has not been met.

ORDER: The appeal is dismissed.