



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF M-K-O-

DATE: FEB. 10, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

APPLICATION: FORM I-821, APPLICATION FOR TEMPORARY PROTECTED STATUS

The Applicant, who identifies himself as a native and citizen of Somalia, seeks temporary protected status (TPS). *See* Immigration and Nationality Act (the Act) § 244, 8 U.S.C. § 1254(a). The Director, Vermont Service Center, denied the application. The matter is now before us on appeal. The matter will be remanded for further action consistent with this decision.

On November 7, 2014, the Director denied the application because the Applicant did not establish his identity, or that he is a national of Somalia, and consequently, that he is eligible for the granting of TPS under section 244 of the Act.

On appeal, the Applicant asserts that his nationality and identity has been previously litigated and has been established for over five years. The Applicant further asserts that the Director erred in requiring him to provide an original birth certificate when the United States considers it to be unobtainable. The Applicant states that the Director did not address why the declarations from his family members were not acceptable.

We conduct appellate review on a *de novo* basis. The entire record was reviewed and considered in rendering this decision.

Pursuant to section 244(c)(1)(A) 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. 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, 8 U.S.C. § 1101(a)(21), 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 provides:

- (a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of

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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.

The burden of proof is upon the Applicant to establish that the above requirements are met. 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. 8 C.F.R. § 244.9(b). To meet this burden of proof the Applicant must provide supporting documentary evidence of eligibility apart from the Applicant's own statements. *Id.*

Upon *de novo* review, the record reflects that on October 9, 2009, the Applicant applied for admission as an asylee into the United States at the [REDACTED] port of entry, and identified himself to be a citizen of Somalia. On the same date, a Form I-867A, Record of Sworn Statement in Proceedings under section 235(b)(1) of the Act, was executed. The Applicant, while under oath, asserted that he departed Somali in July 2009 to Kenya with Kenyan identification documentation belonging to another individual.<sup>1</sup> He reported that he subsequently departed Kenya in August 2009 to Cuba with a Kenyan passport in his name, then entered Belize with the Kenyan passport, and then traveled by taxi to Guatemala before entering Mexico. The Applicant asserted that he turned himself into the Mexican Immigration on September 15, 2009, and was released on October 2, 2009.

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<sup>1</sup> The Applicant asserted that the Kenyan documents were returned to the individual who had assisted with his entry into Kenya.

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During his credible fear interview conducted on October 22, 2009, the Applicant testified that he was not a citizen of Kenya and had never resided in Kenya, but that he traveled from Somalia using a fraudulent Kenyan passport. On October 30, 2009, a Form I-862, Notice to Appear, was served on the Applicant. The Applicant was ordered removed by an immigration judge (IJ) on [REDACTED] 2010.

The Applicant submitted a letter dated May 30, 2012, from an official of the Permanent Mission of the Somali Republic to the United States, which indicated that the office did not issue travel documents, and that due to the Somalia's current status, there is no other office available to issue travel documents to Somali citizens.

In a request for evidence to establish the Applicant's nationality and identity, the Applicant, in response, asserted that he was born in [REDACTED] Somalia, but cannot provide an original birth certificate as it was lost in a house fire. The Applicant further asserted that because there is no government in Somalia, he cannot obtain a passport or identity documentation. The Applicant submitted:

- A copy of a birth certificate with English translation, and his Maryland driver's license.
- A declaration from his uncle, who stated that he was residing in [REDACTED] Somalia and saw the Applicant when he was an infant. The uncle further stated that in 2009, he saw the Applicant in California at the time the Applicant was seeking asylum in the United States.
- A declaration from a woman who asserted that she was born in Somalia and is the Applicant's mother, indicating she does not have the Applicant's Somali birth certificate as it was lost when their home was burnt down. The affiant stated that she is currently residing in a refugee camp in [REDACTED] Kenya with her other children.

The Applicant was interviewed on August 14, 2014, as the Director determined that the evidence submitted in response to the RFE was insufficient to establish his nationality and identity. Based on the interview and the documents that had been submitted, the Director determined that the Applicant had not credibly established his nationality and identity.

On appeal, the Applicant asserts that the Director erred in determining that his identity and nationality as a Somali had not been established as the immigration courts, U.S. Immigration and Customs Enforcement, and USCIS have accepted his citizenship as a matter of fact.

The Applicant has not demonstrated, however, that the Applicant's identity and nationality have been adjudicated and determined. The Form I-862, Notice to Appear, served on the Applicant on October 30, 2009, *alleged* to the nationality and citizenship of the Applicant, and a notice dated January 28, 2010, from the Deputy Field Office Director, [REDACTED] California, advised the Applicant that parole would not be granted because his identity had not been established. In addition, the IJ ordered the Applicant removed to Somalia because it was listed as his country of origin on his Form I-589, Application for Asylum and for Withholding of Removal.

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We further note that the record is silent to the findings of interviewing officer at the conclusion of the interview on August 14, 2014, and of the IJ during the Applicant's removal proceedings. The oral decision of the IJ is not included in the record and may have addressed the matter of nationality and identity, and a review of the record of sworn statement signed by the Applicant at his interview on August 14, 2014, contains no inconsistencies or discrepancies when compared with his earlier sworn statements.

The Applicant has submitted affidavits from affiants who have attested to being present at or after the time of his birth in ██████████ Somalia. However, USCIS is not be able to confirm the validity of a familial relationship between the Applicant and the affiants as there are no civil documents available in Somalia due to its civil war. There continues to be no recognized competent civil authority to issue civil documents since December 1990, and there are no circumstances under which immigrant visa applicants can reasonably be expected to recover original documents held by the former government of Somalia. *See* U.S. Department of State, Country Reciprocity Schedules, Somalia Reciprocity Schedule, <http://travel.state.gov/contents/visas/en/fees/reciprocity-by-country-SO.html>.

Nevertheless, the Applicant has provided sufficient material to demonstrate that he meets the requirements of 8 C.F.R. § 244.9(a)(1). The Applicant has affirmed that he is a national of Somalia and has provided an affidavit describing his unsuccessful efforts to obtain evidence of his nationality and identity, and why the consular process is unavailable. In support of his attempt to establish his nationality and identity, the Applicant provided letters from affiants and an official of the Permanent Mission of the Somali Republic to the United States. We find that the Applicant has provided independent objective evidence which meet the regulatory requirement as described in 8 C.F.R. § 244.9(a)(1) to establish that he is a national of a foreign state designated by the Secretary. 8 C.F.R. § 244.2(a). Therefore, the Director's finding will be withdrawn and the matter will be remanded for further adjudication of the application.

The burden of proof rests with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The decision of the Director, Vermont Service Center, is withdrawn. The matter is remanded to the Director, Vermont Service Center, for further proceedings consistent with the foregoing opinion and for entry of a new decision, which if adverse, shall be certified to us for review.

Cite as *Matter of M-K-O-*, ID# 14605 (AAO Feb. 10, 2016)