



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

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

MATTER OF J-M-D-

DATE: SEPT. 29, 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. *See* Immigration and Nationality Act (the Act) section 244, 8 U.S.C. § 1254a. Temporary Protected Status (TPS) provides lawful status and protection from removal for foreign nationals, of specifically designated countries, who register during designated periods, satisfy country-specific continuous residence and physical presence requirements, are admissible to the United States, are not firmly resettled in another country, and are not subject to certain criminal- and security-related bars.

The Director, Vermont Service Center, denied the application. The Director concluded the Applicant did not meet the filing requirements for late registration and did not establish his identity. The Director also concluded that the Applicant did not establish that he is either a national of Somalia or that he is stateless and last habitually resided in Somalia.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and states that the Director erred in concluding that he did not comply with the late filing requirements, as his asylum application is still pending. The Applicant further asserts that the evidence of record is sufficient to establish his Somalian nationality and identity.

Upon *de novo* review, we will sustain the appeal, finding that the Applicant has established that he is eligible for late registration, that he is a national of Somalia, and that he is otherwise eligible for TPS.

I. LAW

The Applicant is seeking TPS. The regulation at 8 C.F.R. § 244.2(f) provides that an initial TPS applicant is eligible to register if he or she

- (1) Registers for TPS 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;

....

- (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;

.... or

- (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant. . . .

Section 244(c)(1) of the Act and the related regulations in 8 C.F.R. § 244.2(a) provide that an applicant is eligible for TPS only upon establishing that he or she 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. Section 101(a)(21) of the Act provides that the term “national” means a person owing permanent allegiance to a state.

In applying for TPS, an applicant must submit evidence of nationality. Acceptable evidence may consist of a passport, a birth certificate accompanied by photo identification, or any national identity document from the alien’s country of origin bearing photo and/or fingerprint. 8 C.F.R. § 244.9(a). If these documents are unavailable, an applicant must 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. *Id.*

## II. ANALYSIS

The following issues are presented on appeal: first, whether the Applicant has met the requirements for late initial filing; second, whether the Applicant has established that he is a national of Somalia; and finally, whether he has established his identity. The Applicant asserts that he is eligible for late registration because he has an asylum application pending in Immigration Court. He also contends that he has met the evidentiary requirements to establish both his nationality and identity.

The record consists of: a brief; immigration applications, forms, and related correspondence; copies of documents relating to the Applicant’s mother’s identity and nationality; declarations from the Applicant’s mother; records from Immigration Court, U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protections (CBP); reports regarding conditions in Somalia and the availability of government-issued documents; medical records; a lease agreement; financial records; childcare records; and declarations from acquaintances.

After reviewing the entire record, we conclude that the Applicant has established that he is eligible for late registration on account of his pending asylum application. We also conclude that the

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Applicant has submitted sufficient documentation to establish his identity and his Somalian nationality.

#### A. Eligibility

As stated above, the Applicant has been found ineligible for TPS under section 244(c)(1)(A) of the Act.

The burden of proof is upon the Applicant to establish that the above requirements are met. *See* 8 C.F.R. § 244.9(a)(3). Applicants shall submit all documentation as required in the instructions or requested by United States Citizenship and Immigration Services. 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.*

##### 1. Late Registration

An applicant who did not register for TPS during the initial registration period or a subsequent extension of such designation may qualify for late registration upon satisfaction of the conditions in 8 C.F.R. § 244.2(f)(2) and (g). To qualify for late registration, Somali applicants and persons without nationality who last habitually resided in Somalia must provide evidence that during the initial registration period for the re-designation, May 1, 2012, through October 29, 2012, he or she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2). Further, if the qualifying condition or application expired or was terminated, an applicant must file for TPS within the 60-day period immediately following the expiration or termination of the qualifying condition. 8 C.F.R. § 244.2(g).

The Applicant states that he is eligible for late registration as his asylum application has been pending since before the initial registration period, until the present.

The record reflects that in 2011, the Applicant and his mother applied for admission into the United States at the [REDACTED] port of entry. The Applicant's mother approached the CBP officer and requested asylum for herself and the Applicant. They were subsequently paroled into the United States and placed into removal proceedings in Immigration Court. Their removal proceedings were consolidated, and in [REDACTED] 2012, his mother filed a Form I-589, Application for Asylum and for Withholding of Removal, with the Immigration Court. In her Form I-589, she included the Applicant as a dependent family member. In 2013, the Immigration Judge administratively closed the proceedings without entering a decision on the asylum application. The Immigration Judge's order states that the case is closed to allow the Applicant to apply for TPS, and also states that the case remains under the Immigration Court's jurisdiction and docket control.

On appeal, the Applicant asserts that administrative closure is not a denial, that the application is still pending, and that he has therefore met the late initial filing requirements. We agree, as the

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Applicant's assertion is supported by case law. The Board of Immigration Appeals (the Board) has explained that:

Administrative closure . . . is used to temporarily remove a case from an Immigration Judge's active calendar. . . . In general, administrative closure may be appropriate to await an action or event that is relevant to immigration proceedings but is outside the control of the parties or the court and may not occur for a significant or undetermined period of time.

*Matter of Bavakan Avetisyan*, 25 I&N Dec. 688 at 692 (BIA 2012). The Board distinguished administrative closure from termination of proceedings, as administrative closure does not result in a final order, nor does it constitute a conclusion of the proceedings. *Id.* at 695.

Because administrative closure is a temporary measure that does not result in a conclusion of removal proceedings, the Applicant's asylum application remains pending. Accordingly, he has established eligibility for late registration under 8 C.F.R. § 244.2(f)(2)(ii).

## 2. Identity and Nationality

To qualify for TPS, the Applicant must provide evidence that he is a national of a state designated under section 244(b)(1) of the Act or, in the case of an applicant having no nationality, is a person who last habitually resided in such designated state. *See* section 244(c)(1)(A) of the Act. Section 244(b)(1) of the Act contains the requirements for the designation of a foreign country for TPS purposes.

On May 1, 2012, the Secretary re-designated Somalia as a country eligible for TPS. This designation allowed nationals of Somalia who have continuously resided in the United States since May 1, 2012, and who have been continuously physically present in the United States since September 18, 2012, to apply for TPS. The TPS designation has been extended several times, with the latest extension valid until March 17, 2017.

The Applicant did not submit evidence of his identity or nationality with his Form I-821, Application for Temporary Protected Status. As a result, U.S. Citizenship and Immigration Services (USCIS) issued a request for such evidence, explaining that records are generally unavailable for Somalis and providing examples of other possible evidence. In response, the Applicant submitted a declaration from his mother attesting to his birth in ██████████ Somalia. The Director determined that this declaration was not sufficient and scheduled an interview with the Applicant and his mother, who is also a TPS applicant. Because of the Applicant's young age, the USCIS officer did not interview him, but did elicit testimony from his mother. Based on the interview and the evidence in the record, the Director found that the Applicant had not established his identity or nationality.

On appeal, the Applicant states that he does not have a birth certificate, passport, or other national identity document because the civil war in Somalia has made government records unavailable. Instead,

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he submits a second declaration from his mother, who states that the Applicant was born in [REDACTED] Somalia, in [REDACTED] that she was unable to obtain documentation of his birth or nationality because there was no administrative or governmental entity providing such documents; and that she cannot obtain the documents presently because there still is no governmental entity providing such documents. He also submits reports corroborating his mother's claim that government documents are unavailable in Somalia.

The U.S. Department of State has also recognized that official Somali documents are unavailable, as there has been no recognized competent authority to issue civil documents since December 1990. *See* U.S. Department of State, Country Reciprocity Schedules, Somalia Reciprocity Schedule, <https://travel.state.gov/content/visas/en/fees/reciprocity-by-country/SO.html>.

The record as a whole establishes that a birth certificate or other direct evidence of the Applicant's nationality is unavailable. Because the Applicant is a minor under the age of [REDACTED] we accept his mother's declaration on his behalf and we find that this declaration qualifies as an affidavit of identity and nationality under 8 C.F.R. § 244.9(a)(1). The regulation provides that, where evidence of identity and nationality 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.

*Id.*

As the Applicant's mother's affidavit fulfills those requirements, and there is no conflicting information in the record, we find that the Applicant has established both his identity and his Somali nationality.

#### B. Discretion

The Applicant has established that he meets the eligibility requirements for TPS under section 244(c) of the Act. The Applicant also merits a grant of TPS as a matter of discretion. *See* 8 C.F.R. § 244.2 (providing that an applicant may be granted TPS in the discretion of the director). We have not identified any negative factors in the Applicant's case based on the available record. The favorable factors in this matter are the Applicant's 5 years of residence in the United States since age [REDACTED] and his status as a minor; and his apparent lack of any criminal history. Under the totality of the circumstances, the record establishes that the positive factors in this case outweigh the negative factors, and a favorable exercise of discretion is warranted.

### III. CONCLUSION

An applicant for TPS has the burden of proving that he or she meets the requirements for this benefit and is otherwise eligible under the provisions of section 244 of the Act. The Applicant has established eligibility for TPS. Accordingly, we sustain the appeal.

**ORDER:** The appeal is sustained.

Cite as *Matter of J-M-D-*, ID# 123622 (AAO Sept. 29, 2016)