



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

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

In Re: 15302752

Date: JUN. 23, 2022

Motion on Administrative Appeals Office Decision

Form I-821, Application for Temporary Protected Status

The Applicant seeks review of a decision withdrawing his Temporary Protected Status (TPS) under section 244, of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a.

The Applicant was granted TPS in 2002 under the Somali designation. The Director of the Vermont Service Center subsequently withdrew TPS, concluding that the Applicant was ineligible for such status because he did not establish his identity or Somali nationality, nor did he demonstrate that he was not firmly resettled in Kenya before entering the United States. The Director also noted that the Applicant may have been inadmissible for fraud and willful misrepresentation of identity.<sup>1</sup> We dismissed the Applicant's appeal, finding the preponderance of the evidence insufficient to support his identity and nationality claims in view of his previous false testimony and use of alternate identities to obtain admission to the United States and other immigration benefits. The Applicant then filed a motion to reopen and reconsider our adverse decision with additional evidence consisting of his state driver's license, letter from the Somali embassy, and affidavits. We dismissed the motion explaining that given the Applicant's admitted use of another person's identity and false claims concerning his name and other biographic information we could not give this additional evidence significant weight in establishing his true identity and Somali nationality. Finding the Applicant ineligible for TPS on that basis alone, we did not address the additional grounds of the Applicant's ineligibility for TPS identified by the Director.

The matter is now on a second combined motion to reopen and reconsider. The Applicant states that he has been able to secure primary documentation of his identity and nationality, which was not previously available. He requests us to reopen his TPS proceedings based on this new evidence and reconsider our prior adverse decision.

Upon review, we conclude that the new evidence is sufficient to establish the Applicant's identity and nationality. Nevertheless, we will dismiss the motion because the Applicant has not met his burden of proof to demonstrate that he is not subject to the firm resettlement bar for TPS.

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<sup>1</sup> The Applicant has since filed a Form I-601, Application to Waive Inadmissibility Grounds, which is currently pending.

## I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider, in turn, must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

As previously discussed, the Director may withdraw TPS if the applicant was not in fact eligible at the time TPS was granted or later becomes ineligible. 8 C.F.R. § 244.14(a)(1).

Each TPS applicant must provide evidence of identity and nationality, if available. 8 C.F.R. § 244.9(a). Acceptable evidence of identity and nationality may consist of a passport, a birth certificate accompanied by photo identification, or any national identity document from the foreign national's country of origin bearing a photo, fingerprint, or both. *Id.*

A national of a TPS-designated country is not eligible for TPS if they were firmly resettled in another country prior to arriving in the United States. Section 244(c)(2)(B)(ii) of the Act; section 208(b)(2)(A)(vi) of the Act, 8 U.S.C. § 1158(b)(2)(A)(vi); 8 C.F.R. § 244.4(b).

The burden of proof is on the Applicant to demonstrate eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). 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 his burden of proof, the Applicant must provide supporting documentary evidence of eligibility apart from his own statements. *Id.*

## II. ANALYSIS

We incorporate our previous decisions here by reference, and will only repeat certain facts underlying the Director's findings concerning the Applicant's ineligibility for TPS as they relate to the Applicant's claims and evidence he submits with the instant motion.

The record reflects the Applicant's testimony in asylum proceedings that after leaving Somalia in 1990 he traveled to Kenya, where he remained for the next three years, and that he entered the United States in April 1994 through the Chicago, Illinois port of entry using a fraudulent Kenyan passport in an unknown name. The Applicant subsequently testified that following his entry into the United States he purchased a Form I-94 (Arrival/Departure Record) and a social security card from M-A-G-, a Somali national who was admitted to the United States as a refugee a few months earlier, and that he subsequently obtained lawful permanent resident status under M-A-G-'s identity. He then applied for naturalization and attested during an interview with a U.S. Citizenship and Immigration Services (USCIS) officer that he was M-A-G-. When confronted with the fact that his appearance did not match the photograph and physical description of the individual associated with M-A-G-'s immigration record, the Applicant stated that he was A-A-M-, born in Somalia. He was placed in removal proceedings and requested asylum, but an Immigration Judge denied the request citing the Applicant's overall lack of credibility given his previous misrepresentations and false testimony under oath. In

2002, following an interview with a USCIS officer the Applicant was granted TPS under the Somali designation as A-A-M-. As stated, the Director subsequently withdrew TPS finding that the Applicant did not provide sufficient evidence to establish his identity and Somali nationality, and that he also did not demonstrate that he was not firmly resettled in Kenya prior to entering the United States in 1994.

#### A. Identity and Somali Nationality

We previously determined that in view of the Applicant's misrepresentations of identity his state identification document, a letter from the Somali Embassy, and affidavits indicating generally that the Applicant was Somali were not sufficient to establish that he was A-A-M- born in Somalia, as he claimed.

The Applicant now submits a copy of his Somali passport and identity card issued by the Somali Embassy in Washington, D.C., as well as a copy of his Somali birth certificate. He explains that he traveled to Washington, D.C. and was extensively interviewed at the Embassy about Somali geography, culture, and his family background before the Somali government officials were satisfied that he was in fact A-A-M-, a Somali national and issued him those documents. The Applicant states that he was previously unable to submit the government-issued identity documents because he did not receive them until after we issued our last decision.

The Applicant's passport, identity card, and birth certificate issued by the Somali government are acceptable proof of his identity and Somali nationality for TPS purposes. 8 C.F.R. § 244.9(a).

Based on this new evidence we conclude that the Applicant has met his burden of proof to establish that he is A-A-M-, a Somali national born in 1965, and we withdraw our previous determination to the contrary.

#### B. Firm Resettlement

Nevertheless, the evidence remains insufficient to overcome the Director's determination that the Applicant did not establish he was not firmly resettled in Kenya before arriving in the United States.

An individual is considered to be firmly resettled if, prior to arrival in the United States, they entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement unless they establish: 1) that entry into that country was a necessary consequence of their flight from persecution, they remained in that country only as long as was necessary to arrange onward travel, and did not establish significant ties in that country; or 2) that the conditions of residence in that country were so substantially and consciously restricted by the authority of the country of refuge that they were not in fact resettled. 8 C.F.R. § 208.15(a)-(b).

As stated, the Applicant represented that he traveled to Kenya in 1990 and that he lived there until 1994. Because this indicated the Applicant may have been resettled in Kenya, the Director issued a notice of intent to deny (NOID) asking the Applicant to submit copies of his expired passports showing his departures and entries, and to provide additional information about his life in Kenya, including a list of all addresses where he resided, and the length of time he spent at each address. The Director

also requested the Applicant to explain his immigration status in Kenya; whether he had permission to stay there either permanently or temporarily; and his reasons for being in Kenya and for leaving the country. Lastly, the Director asked the Applicant to explain whether he was a refugee and if had the same privileges as other individuals living in Kenya permanently.

In response, the Applicant stated that he lived in Somalia until the civil war started there in 1990, and that he then “went to Nairobi, Kenya and stayed there until 1994.” Regarding his immigration status in Kenya, the Applicant stated generally that “[d]uring the years in Kenya [he] had no status.”

The Director determined that this response was not sufficient to establish that the Applicant was not subject to the firm resettlement bar, because he did not provide the requested documents and detailed information about his life and status in Kenya.

In his previous motion,<sup>2</sup> the Applicant asserted that the Director’s determination on that issue was in error, because the Director did not provide, as required *prima facie* evidence that the Applicant received an offer of resettlement from Kenya either under his true identity or an alias.<sup>3</sup> We disagree.

In *Matter of A-G-G-*, 25 I&N Dec. 486 (BIA 2011), the Board of Immigration Appeals (the Board) set forth a four-step framework for determination of firm resettlement under section 208(b)(2)(A)(vi) of the Act and 8 C.F.R. § 208.15:

- (1) The government bears the burden of presenting *prima facie* evidence of an offer of firm resettlement by producing direct evidence of governmental documents indicating an his or her ability to stay in a country indefinitely or indirect evidence, if of a sufficient level of clarity and force;
- (2) The foreign national can rebut the *prima facie* evidence by showing by a preponderance of the evidence that such an offer has not been made or that they would not qualify for it;
- (3) The totality of the evidence presented by both parties is considered to determine whether the foreign national has rebutted the evidence of an offer of firm resettlement; and
- (4) If the foreign national is found to have firmly resettled, the burden shifts to the foreign national to establish that an exception to firm resettlement applies by a preponderance of the evidence.

In the first step of the firm resettlement analysis, USCIS must present either direct or, if unavailable indirect evidence of an offer of firm resettlement. *Id.* at 501-02. Direct evidence may include documentation of refugee status, a passport, a travel document, or other evidence indicative of permanent residence. *Id.* Indirect evidence may include the following: the immigration laws or refugee process of the country of proposed resettlement; the length of the foreign national’s stay in a third country; the foreign national’s intent to settle in the country; family ties and business or property connections; the extent of social and economic ties developed by the foreign national in the third

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<sup>2</sup> The Applicant did not address this denial ground on appeal, and he does not offer any additional evidence or information about his life in Kenya in the instant motion.

<sup>3</sup> We note that the Applicant did not disclose the name he used to enter the United States with the Kenyan passport. Rather, he stated that he used only one other name, M-A-G-, to obtain permanent resident status in the United States.

country; the receipt of government benefits or assistance, such as assistance for rent, food, and transportation; and whether the foreign national had legal rights normally given to people who have some official status, such as the right to work and enter and exit the country. *Id.*

Here, the Applicant indicated that he left Somalia in 1990 to escape civil war, and that he stayed in Kenya until 1994. The Applicant's own testimony about his years-long stay in Kenya is indicative of his permanent residence there and, thus indirect evidence that he was firmly resettled in Kenya before coming to the United States in 1994.

In the second step of the firm resettlement analysis, the Applicant can rebut the evidence of an offer of firm resettlement by showing that such an offer has not been made or that he would not qualify for it. *Matter of A-G-G- at 503*. The Applicant has not made such a showing, as he did not explain where and with whom he lived in Kenya, how he supported himself during the time he lived there,<sup>4</sup> whether he had any family or business ties in Kenya, and if he sought refugee or any other legal status there.

Absent this information, we cannot conclude that the Applicant has sufficiently rebutted the evidence indicative of his firm resettlement in Kenya. The Applicant also has not provided any details about his life and activities in Kenya, and he has not claimed that he remained there only so long as was necessary to arrange onward travel. Nor has he indicated that while he resided in Kenya his rights were so substantially and consciously restricted by the Kenyan authorities that he was not in fact resettled there. The Applicant therefore has not shown that he meets the firm resettlement exception in 8 C.F.R. § 208.15(a) or (b).

Based on the above, we conclude that the Applicant has not met his burden of proof to establish that he is not subject to the firm resettlement bar notwithstanding his longtime residence in Kenya or, in the alternative that he qualifies for an exception to this bar.

### III. CONCLUSION

The Applicant has now submitted sufficient evidence to establish his identity and Somali nationality and we withdraw our previous adverse determination on that issue. Nevertheless, the Applicant has not overcome the Director's determination that he did not meet his burden of proof to establish that he was not subject to the firm resettlement bar for TPS. The Applicant therefore remains ineligible for TPS and granting his motion to reopen and reconsider at this time would serve no purpose. The Applicant's TPS will remain withdrawn.

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.

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<sup>4</sup> During his interview with a USCIS officer in 2002, the Applicant testified that he paid \$3000 to a man in Kenya for the Kenyan passport he later used to enter the United States, and that he traveled with that man by plane from Kenya to Germany and then to the United States.