



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

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

In Re: 22515394

Date: SEPT. 13, 2022

Appeal of Vermont Service Center Decision

Form I-821, Application for Temporary Protected Status

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

The Director of the Vermont Service Center denied the application, concluding that the Applicant did not demonstrate eligibility for late initial TPS registration under the Somali designation, and she did not satisfactorily establish her identity and Somali nationality.

On appeal, the Applicant submits additional evidence and asserts that the Director's decision was in error, because she has met her burden of proof to establish that she is a Somali national eligible for late initial TPS filing.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will remand the matter to the Director for the entry of a new decision consistent with our opinion below.

I. LAW

On May 1, 2012, the Secretary of Homeland Security extended the designation and redesignated Somalia for TPS.¹ Department of Homeland Security regulations provide that an applicant who is a national of a foreign state so designated must register for TPS during the initial registration period announced by public notice in the Federal Register. 8 C.F.R. § 244.2(f)(1). To meet the initial registration requirements, Somali nationals must have applied for TPS during the initial registration period from May 1, 2012, through October 29, 2012.

¹ See *Extension and Redesignation of Somalia for Temporary Protected Status*, 77 Fed. Reg. 25723 (May 1, 2012). The designation of Somalia for TPS has been extended several times since then, with the most recent extension and redesignation in July 2021. See *Extension and Redesignation of Somalia for Temporary Protected Status*, 86 Fed. Reg. 38744 (July 22, 2021).

Applicants who did not register for TPS within the above time frame may do so during any subsequent registration period, if they meet one of the late registration requirements described in the regulations at 8 C.F.R. § 244.2(f)(2) or (g).

The regulations at 8 C.F.R. § 244.2(f)(2) provide that to establish eligibility for late initial registration, an applicant must show that during the initial registration period (May 1, 2012, through October 29, 2012) he or she:

- (i) was a nonimmigrant or had been granted voluntary departure status or any relief from removal;
- (ii) had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which was pending or subject to further review or appeal;
- (iii) was a parolee or had a pending request for re-parole; or
- (iv) was a spouse or child of a foreign national eligible to be a TPS registrant.

If the qualifying condition has expired or been terminated, the applicant must file for TPS within a 60-day period immediately following the expiration or termination of the qualifying condition. 8 C.F.R. § 244.2(g).

TPS applicants must also provide evidence of their identity and nationality, if available. 8 C.F.R. § 244.9(a). Acceptable evidence of nationality, in descending order of preference, may consist of a passport, a birth certificate accompanied by photo identification, or any national identity document from the applicant's country of origin bearing a photo, fingerprint, or both. *Id.* A personal interview before an immigration officer shall be required for each applicant who does not provide documentary proof of identity or nationality. *Id.* During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. *Id.*

U.S. Citizenship and Immigration Services (USCIS) will judge sufficiency of all evidence according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). To meet their burden of proof, applicants must provide supporting documentary evidence of eligibility apart from their own statements. *Id.*

II. ANALYSIS

The issues on appeal are (1) whether the Applicant has demonstrated eligibility for late initial TPS registration and, if so (2) whether she has established her identity and Somali nationality.

We have reviewed the entire record of proceedings as supplemented on appeal, and conclude that the Applicant has met her burden of proof to show that she meets both requirements.

A. Eligibility for Late Initial Registration

The record reflects that the Applicant filed the instant Form I-821 in August 2017 as an initial late TPS request, after the Secretary of Homeland Security extended the designation of Somalia for TPS.²

² See *Extension of the Designation of Somalia for Temporary Protected Status*, 82 Fed. Reg. 4905 (Jan. 17, 2017).

As stated, to be eligible for late initial TPS registration a Somali national must show, in part that during the initial TPS registration period he or she had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which was pending or subject to further review or appeal. 8 C.F.R. § 244.2(f)(2)(ii).

Here, the record reflects that in May 2009 the Applicant filed a Form I-589, Application for Asylum and Withholding of Removal. USCIS subsequently determined that the Applicant did not establish eligibility for asylum; in 2010 the Applicant was served with a Form I-862, Notice to Appear, and her asylum application was referred for adjudication by an Immigration Judge in removal proceedings. The Immigration Judge administratively closed the removal proceedings in [REDACTED] 2016 to allow adjudication of the Form I-130, Petition for Alien Relative, the Applicant's spouse filed on her behalf.

The Director determined that the 2016 administrative closure of the removal proceedings was equivalent to termination of the Applicant's pending asylum request and thus, as relevant in this case, the qualifying condition in 8 C.F.R. § 244.2(f)(2)(ii). The Director further found that because the Applicant did not file for TPS until August 2017—more than 60 days after the Immigration Judge administratively closed the removal proceedings—she did not meet the timing requirement in 8 C.F.R. § 244.2(g) and was therefore ineligible for late initial registration.

The Applicant asserts that this determination was incorrect, as her asylum request has been pending throughout the initial registration period and remains pending at this time. She states that contrary to the Director's finding her removal proceedings were not terminated, but rather temporarily closed to allow adjudication of the Form I-130 filed on her behalf and may be re-calendared at any time. She avers that the proceedings therefore have not ended, and her asylum request is still pending the Immigration Judge's decision. We agree.

Administrative closure does not result in a final order, but is merely an administrative convenience which allows the removal of cases from the calendar in appropriate situations. *Matter of Amico*, 19 I&N Dec. 652, 654 n.1 (BIA 1988); *Matter of Avetisyan*, 25 I&N Dec. 688, 696 (BIA 2012) (stating that it may be appropriate to administratively close removal proceedings while an agency adjudicates a previously filed application or petition). By administratively closing a case, an Immigration Judge or the Board of Immigration Appeals "temporarily pause[s] removal proceedings" and places the case on hold. *Matter of W-Y-U-*, 27 I&N Dec. 17, 18 (BIA 2017).³ After the case is administratively closed, either party may reactivate it before the Immigration Court by filing a motion to re-calendar. *Id.* The Applicant's removal proceedings therefore have been pending since 2010, and the Immigration Judge has not yet made a decision on her asylum request.

Consequently, the Applicant has demonstrated that she had an application for asylum pending during the initial registration period (from May 1, 2012, through October 29, 2012), and that this application is still pending. The Applicant is therefore eligible for late initial TPS registration pursuant to the regulations at 8 C.F.R. § 244.2(f)(2)(ii).

³ See also *Matter of Cruz Valdez*, 28 I&N Dec. 326, 327 (A.G. 2021) (overruling *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018) and restoring the ability of Immigration Judges and the Board of Immigration Appeals to administratively close cases in accordance with the standard set out in *Matter of Avetisyan* and *Matter of W-Y-U-*).

B. Identity and Somali Nationality

The preponderance of the evidence in the record, including the additional evidence the Applicant submits on appeal is also sufficient to establish her identity and Somali nationality.

The record shows that the Applicant was admitted to the United States as a nonimmigrant with a Djibouti passport and U.S. visa issued under a different name. The record also reflects the Applicant's testimony in asylum proceedings that after escaping the ongoing civil war in Somalia in 2007, she traveled to Djibouti. The Applicant testified that because she did not have any documents at the time, she paid an individual to make a passport for her and this individual provided her with the Djibouti passport she later used to enter the United States.

With the instant TPS application, and in response to the Director's two subsequent requests for evidence the Applicant submitted documents including her Somali birth certificate issued in [redacted] in 2007; itinerary for her travel to Washington, D.C. in early May 2018, Somali passport, and identification card issued by the Somali embassy in Washington, D.C. in May 2018; letters from the Somali Ambassador and IFTIN Center; and affidavits. The Director found this evidence inadequate to establish the Applicant's claimed identity and Somali nationality and, pursuant to the regulations at 8 C.F.R. § 244.9(a) referred her for an in-person interview at a local USCIS Field Office. At this interview, the Applicant presented her Somali passport and identity card; she testified that she was a native and citizen of Somalia, and again described the circumstances under which she purchased the Djibouti passport with a different name. The Applicant admitted that she used the Djibouti passport to fraudulently obtain the U.S. nonimmigrant visa with which she entered the United States. The interviewing USCIS officer also questioned the Applicant why her birth was registered late, and the Applicant explained that people born in Somalia sometimes do not obtain birth certificates right away because birth certificates are generally not required in that country, but that they may obtain a birth certificate later "when [they] come to the city." The Applicant stated that her father obtained a birth certificate for her in [redacted] in 2007, and that he also registered the birth of her eldest child while a friend registered the birth of her younger child.

In denying the Applicant's TPS request, the Director acknowledged that according to the U.S. Department of State reciprocity schedule primary documents, such as birth certificates and school records are generally not available in Somalia because most such documents have been destroyed during the war, and until recently there has been no government of Somalia. Nevertheless, the Director concluded that the Applicant failed to establish her identity and Somali identity. Specifically, the Director found that although the Applicant was issued a Somali passport and identity card, it was not clear what documents she presented to the Somali government authorities to establish her true name, date of birth, and nationality. The Director further stated that the Applicant's Somali birth certificate was also insufficient as proof of identity and nationality because it was issued 23 years after her birth, and the fact that the photograph was missing from the document raised questions about its authenticity. Lastly, the Director noted that the Applicant's interview with a USCIS officer "did not sufficiently overcome concerns relating to [her] identity and nationality as [she did not provide an] new and compelling evidence to establish [her] identity and nationality." The Applicant has overcome the Director's adverse determination on appeal.

As an initial matter, the Applicant's passport and identity card issued in the United States by the current Somali government in 2018 are acceptable primary evidence of her identity and Somali nationality for TPS purposes.⁴ 8 C.F.R. § 244.9(a).

Although the Director concluded that in this particular case the passport was not adequate as proof of identity and nationality because it was not clear on what documentation the Somali embassy relied in issuing it, there is nothing in the record to indicate that the passport was not issued in accordance with the regular Somali government's evidentiary requirements and procedures, or that it is otherwise not valid. To the contrary—the Somali Ambassador's certification that after conducting an interview with the Applicant her "nationality of origin" was determined to be Somali indicates that the Somali government examined the Applicant claims of identity and Somali nationality and found her eligible for issuance of that country's passport and identity card. We conclude therefore that the Applicant's Somali passport and her identification card are sufficient primary evidence of her identity and nationality required under the regulations.

The additional secondary evidence supports this conclusion. The record includes numerous affidavits from individuals who knew the Applicant and her family in Somalia, as well as a letter from the director of a Somali community organization, who attested that the Applicant was introduced to him by an imam who knew her in Somalia, and that the Applicant spoke the Somali dialect spoken only by native-born Somalis. The affidavits the Applicant submits on appeal further support her identity and nationality claims. The Applicant's former neighbor from Somalia attests that he was about nine years old when the Applicant was born, and that they grew up together in the same neighborhood in Somalia. The Applicant's uncle, in turn confirms that he was living with the Applicant's family in Somalia when she was born. The remaining affidavits were executed by the Applicant's family friends, who state that they have known the Applicant in Somalia since she was a child and confirm that she was born and grew up there. The affidavits include details that point to the affiants' personal knowledge of the Applicant's identity and birth in Somalia, and their statements are consistent with the Somali government authorities' determination that the Applicant is in fact a Somali national. Thus, the evidence considered in the aggregate is sufficient to establish the Applicant's identity and her Somali nationality, notwithstanding her entry into the United States with the Djibouti passport under a different name.

In conclusion, the Applicant has demonstrated by a preponderance of evidence that she qualifies for late initial TPS registration, and she also has satisfied her burden of proof to establish identity and Somali nationality. The Applicant therefore has overcome the grounds for the denial of her request for TPS. Accordingly, we will return the matter to the Director to determine whether the Applicant meets the remaining eligibility criteria for such status.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

⁴ Accordingly, we need not address at this time whether the Applicant's birth certificate issued in Somalia in 2007, years after former Somali government ceased to exist in 1990, is sufficient on its own to establish her identity and nationality.