



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

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

In Re: 24912250

Date: APR. 14, 2023

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 previously granted TPS as a national of Somalia. The Director of the Vermont Service Center withdrew TPS, concluding that the Applicant did not establish his identity and Somali nationality, nor did he demonstrate that he was not firmly resettled in Kenya before arriving in the United States. The Director also noted that the Applicant may have been inadmissible for fraud and willful misrepresentation of identity at the time he was granted TPS.¹ We dismissed the Applicant's appeal and two subsequent combined motions to reopen and reconsider. In dismissing the Applicant's second motion to reopen and reconsider, we concluded that although he provided sufficient evidence to establish his identity and Somali nationality, he did not meet his burden of proof to show he was not subject to the firm resettlement bar for TPS.

The matter is now before us on a third combined motion to reopen and reconsider. The Applicant submits a declaration under oath and asserts that he was not firmly resettled in Kenya or, even if he was resettled in Kenya he has established eligibility for an exception to the firm resettlement bar.

Upon review, we will dismiss the motions.

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.

¹ Specifically, the Applicant testified that following his entry into the United States he purchased a Form I-94 (Arrival/Departure Record) and a social security card from a Somali refugee who was admitted to the United States a few months earlier, that he subsequently obtained lawful permanent resident status under this refugee's identity, and confirmed that false identity under oath in naturalization proceedings. He was eventually placed in removal proceedings and requested asylum, but an Immigration Judge denied the request citing the Applicant's overall lack of credibility in view of his previous misrepresentations and false testimony under oath. The Applicant has since filed a Form I-601, Application to Waive Inadmissibility Grounds, which remains pending at this time.

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

In our previous decisions, which we incorporate here by reference we determined that the Applicant's own testimony that he left Somalia in 1991 to escape the civil war and stayed in Kenya until 1994 indicated that he may have been firmly resettled in Kenya. We further concluded that the Applicant's general statement in response to the Director's notice of intent to deny (NOID) that he "went to [redacted] Kenya and stayed there until 1994," and that "[d]uring the years in Kenya [he] had no status," were not sufficient to establish he was not subject to the firm resettlement bar.²

The Applicant does not identify any specific legal or policy errors in that determination. Instead, he generally asserts, referencing *Rife v. Ashcroft*, 374 F.3d 606, 610 (8th Cir. 2004), and *Farbakh v. I.N.S.*, 20 F.3d 877, 881 (8th Cir. 1994), that the question of resettlement is not always limited solely to the inquiry of how much time an individual spent in a third country, and factors such as family ties, intent, business or property connections, and other matters are relevant in evaluating whether the firm resettlement bar applies. He states that aside from his prolonged stay in Kenya, there are no other factors in his case that might indicate he was firmly resettled there such as family ties, intent, or business and property connections. He further states that even if the firm resettlement bar applies, he is eligible for the restrictive conditions exception in 8 C.F.R. § 208.15(b).

In his sworn declaration, the Applicant states that after fleeing Somalia in 1991, he arrived at the Kenyan border with a group of other individuals, and subsequently spoke with a Kenyan refugee officer, who gave him a piece of paper with a logo on top, listing his name but without his photograph. He explains that this document did not allow him to freely travel through Kenya or obtain a driver's license; rather he needed proof of permanent residency ("kibanda"), which he claims he had no way of obtaining as a Somali refugee. The Applicant further states that he and the other individuals in his group were directed to live in a refugee camp, [redacted],³ where they were given very little food; although they were told not to leave the camp, they would sometimes go to the city to get basic necessities, such as food, money, and clothing. The Applicant claims he was arrested twice for trying to leave the camp, and was detained overnight in a small dirty room because he had no money to bribe the guards, who pushed, shoved, and disrespected the detainees. He explains that any time he encountered a Kenyan officer he had to run away from the police to avoid being arrested because he had no permanent status in the country. The Applicant recalls three incidents when he was spotted by the Kenyan police at the Somali market in [redacted] Kenya and had to escape. He reiterates that he had

² The Director requested the Applicant to submit evidence including 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.

³ The Applicant does not provide any additional information about the camp, including its location. [redacted] appears to be one of the three refugee camps in the [redacted] complex approximately 250 miles away from [redacted] Kenya.

“absolutely no rights in Kenya,” could not travel freely within the country, did not have close family members or property there, and that for those reasons he left Kenya and came to the United States.

We acknowledge the Applicant’s statements, but conclude that the record remains insufficient to show that he is either not subject to, or eligible for an exception to the firm resettlement bar.

As an initial matter, to meet their burden of proof, applicants must provide supporting documentary evidence of eligibility apart from their own statements. 8 C.F.R. § 244.9(b). Here, the Applicant refers to himself as a Somali refugee and claims he was issued a piece of paper with a logo by a Kenyan refugee officer. Although the Applicant does not provide a copy of this document, his statement indicates that he may have been granted refugee status in Kenya, which is not consistent with his previous claim that he had “no status” in Kenya. Moreover, the Applicant does not offer evidence to support his claim that the Kenyan government restricted the rights of Somali refugees in Kenya, that Somali refugees were unable to obtain permanent residence in Kenya, and that they were subject to arrests and mistreatment by Kenyan police for lack of permanent status. Lastly, the Applicant’s statement about staying at a refugee camp⁴ is not consistent with his previous testimony in removal and TPS proceedings that after arriving in Kenya in 1991, he lived in [] for the next three years with his “aunt,” who was his mother’s best friend, and who owned a business there. Specifically, the Applicant testified at his 2001 removal hearing that he arrived at the Kenyan border in 1991, that shortly thereafter he traveled to [] where he stayed with his aunt, and that with the help of his aunt and his mother’s friends he was able to gather \$4000 to buy a Kenyan passport he used to enter the United States (from Germany) in 1994 under a false identity. Similarly, during his 2002 TPS interview, the Applicant testified that he lived with his aunt in [] Kenya from 1991 through 1994.

An applicant for an immigration benefit must resolve the inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* The Applicant does not explain why he did not previously mention that a Kenyan refugee officer issued him some type of identity document, or that he lived in a refugee camp outside of [] as he now claims, nor does he address his previous testimony that he had “no status” in Kenya and lived in [] with his aunt the entire time he was there.

Moreover, given the Applicant’s prior multiple misrepresentations and false testimony under oath about his identity in adjustment and naturalization proceedings, as well as the Immigration Judge’s adverse credibility finding in his asylum proceedings, we cannot give the Applicant’s unsupported statements about his lack of status and restrictions on his residence in Kenya significant weight.

In view of the above, we conclude that the Applicant has not established new facts sufficient to overcome the Director’s determination that the evidence was inadequate to show he was not subject to the firm resettlement bar for TPS. Nor has the Applicant demonstrated that we erred as a matter of law or USCIS policy in concluding he was ineligible for TPS on those grounds, or that our determination was otherwise incorrect based on the evidence in the record at the time we dismissed

⁴ The Applicant does not explain how long he stayed at the refugee camp.

his previous motion to reopen and reconsider. Consequently, the Applicant has not established a basis for reopening and/or reconsideration of our prior decision. His TPS remains withdrawn.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.