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

M1

[REDACTED]

FILE:

[REDACTED]

OFFICE: Newark District

DATE: NOV 19 2007

[MSC 05 008 14779]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Newark District Office. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director in Newark, New Jersey. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a citizen of Liberia who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The District Director denied the application on the ground that the applicant was ineligible for TPS because she had been involved in persecutory activities in her native country, making her ineligible for TPS under section 244(c)(2)(B)(ii) of the Act.

On appeal counsel asserts that the District Director's decision was in error because it was based on the improper finding of an Immigration Judge that the applicant was a persecutor.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for Temporary Protected Status 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:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (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;

(iii) The applicant is a parolee or has a pending request for reparole; or

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

Section 244(c)(2)(B)(ii) of the Act provides that an alien is ineligible for Temporary Protected Status if the Secretary of the Department of Homeland Security finds that the alien is described in section 208(b)(2)(A) of the Act (which enumerates the types of aliens who are ineligible for asylum). The categories of ineligibility enumerated in this section include any alien who "ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion." Section 208(b)(2)(A)(i) of the Act.

On August 25, 2004, the Department of Homeland Security (DHS) terminated the existing TPS designation for Liberia and re-designated the country for TPS until October 1, 2005. The initial registration period pursuant to the re-designation was August 25, 2004 through February 21, 2005. On August 16, 2005, the TPS designation was extended to October 1, 2006. The registration period for the extension was August 16, 2005 through October 17, 2005. On September 20, 2006, DHS announced the termination of TPS for Liberia, effective October 1, 2007. Extensions of TPS until that date were restricted to aliens who were already TPS registrants or had previously filed applications pending. The registration period for these final extensions was September 20, 2006 through November 20, 2006.

The record shows that the applicant was admitted to the United States as a nonimmigrant visitor (B-2) on December 18, 1999, with authorization to remain in that status until June 17, 2000. The applicant filed a Form I-589, Application for Asylum and for Withholding of Removal, on January 27, 2000. It was denied on November 1, 2002, by an Immigration Judge (IJ) in Newark, New Jersey, who found that the applicant had been complicit in persecutory measures by her employer, the Liberian Telecommunications Corporation, against political opponents of the existing regime, which made her ineligible for asylum under section 208(b)(2)(A)(i) of the Act, and ineligible for Withholding of Removal under section 241(b)(3)(A) of the Act. The Board of Immigration Appeals (BIA) affirmed the decision of the Immigration Judge on July 9, 2004.

The applicant filed her first Form I-821, Application for Temporary Protected Status, at the Missouri Service Center (MSC) on October 7, 2004. The application was transferred on October 15, 2004, to the District Office in Newark, New Jersey. On February 8, 2005, the District Director denied the application on the ground that the applicant was ineligible for TPS under section 244(c)(2)(B)(ii) of the Act because she had "ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion."

The applicant filed a timely appeal, which was received at the Newark District Office on March 3, 2005, and later transferred to the AAO. On appeal counsel asserts that the District Director erred in denying TPS to the applicant because the decision was based on an improper finding by the IJ that the applicant was engaged in persecutory activities, when the applicant's activities on behalf of her employer were only administrative in nature. According to counsel, the IJ's ruling contradicts BIA and federal court case law that administrative

acts do not rise to the level of persecution, and is contrary to the evidence of record which does not indicate that the applicant intended to persecute anyone or that her conduct was causally connected to the persecution of others. The AAO does not agree with counsel's arguments. The IJ's decision was based on the applicant's testimony at an oral hearing and supplemented with substantial documentation. The statute is clear that an alien is ineligible for TPS even if he or she was not a primary persecutor, but only "assisted, or otherwise participated in" persecutory activities. Accordingly, the AAO will affirm the District Director's decision that the applicant is ineligible for TPS under sections 244(c)(2)(B)(ii) and 208(b)(2)(A)(i) of the Act.

It is noted that the applicant filed another TPS application on November 25, 2005, at the Vermont Service Center (VSC) [EAC 06 050 51664]. On April 10, 2007, the VSC Director denied the application on the ground that it was not filed during the initial registration period pursuant to Liberia's re-designation for TPS, which ran from August 25, 2004 to February 21, 2005, and the applicant failed to establish that she was eligible for late registration under any of the criteria enumerated at 8 C.F.R. § 244.2(f)(2). The decision was not appealed. Though the VSC Director made no mention of it in his decision, the application could not be approved for the additional reason that the applicant was found ineligible for TPS in her earlier application, based on the IJ's determination that she had engaged in persecutory acts.

An alien applying for TPS has the burden of proving that he or she meets the requirements and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet that burden.

ORDER: The appeal is dismissed.