U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: JAN 17 2014 Office: CALIFORNIA SERVICE CENTER [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, California Service Center. The applicant has appealed the denial of the re-registration application and the matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

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

The director denied the re-registration application because the applicant had previously filed a frivolous asylum application and, therefore, she is permanently ineligible for any benefit under section 244 of the Act.

On appeal, the applicant asserts that she did not purposely file a frivolous asylum application as she "did not know the individual who filed my application did not used my information, and I didn't know what was in the application since I didn't have a copy of it." The applicant requests that her application be reconsidered and approved.

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 as designated by the Attorney General, now the Secretary, Department of Homeland Security (Secretary), 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 Secretary 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.

Section 208(d) of the Act states, in pertinent part:

(4) Notice of privilege of counsel and consequences of frivolous application. – At the time of filing an application for asylum, the Secretary shall –

(A) advise the alien of the privilege of being represented by counsel and of the consequences, under paragraph (6), of knowingly filing a frivolous application for asylum; and

(B) provide the alien a list of persons (updated not less often than quarterly) who have indicated their availability to represent aliens in asylum proceedings on a pro bono basis.

(6) Frivolous application – If the Secretary determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(A), the alien shall be permanently ineligible for any benefits under this Act, effective as of the date of a final determination on such application.

The regulation at 8 C.F.R. § 208.20 provides:

> For applications filed on or after April 1, 1997, an applicant is subject to the provisions of section 208(d)(6) of the Act only if a final order by an immigration judge or the Board of Immigration Appeals specifically finds that the alien knowingly filed a frivolous asylum application. For purposes of this section, an asylum application is frivolous if any of its material elements is deliberately fabricated. Such finding shall only be made if the immigration judge or the Board is satisfied that the applicant, during the course of the proceedings, has had sufficient opportunity to account for any discrepancies or implausible aspects of the claim. For purposes of this section, a finding that an alien filed a frivolous asylum application shall not preclude the alien from seeking withholding of removal.

The record reflects that a Form I-862, Notice to Appear, was issued on August 16, 1999 and was served on the applicant on August 17, 1999. On December 30, 1999, the applicant was notified by personal service of the privilege of counsel and consequences of knowingly filing a frivolous asylum application pursuant to section 208(d)((4) of the Act. The notice advised the applicant that if she knowingly filed a frivolous application for asylum, she would be barred forever from receiving any benefits under the Act. The applicant was also given verbal notification by the immigration judge (IJ) of the consequences of knowingly filing a frivolous asylum application at time of her removal proceedings on December 30, 1999.[1] The applicant's Form I-589, Application for Asylum and Withholding of Removal, was filed on May 18, 2000. The Form I-589 advised the applicant that if it is determined that she knowingly filed a frivolous application for asylum, she would be permanently ineligible for any benefits under the Act.

On October 2, 2000, a removal hearing was held and the applicant's applications for asylum, withholding of removal and convention against torture were denied, and she was ordered removed from the United States. The oral decision of the IJ indicates that the court found the applicant to have filed a frivolous application for asylum and, therefore, she was permanently barred from receiving any benefits under the Act. The applicant appealed the IJ's decision to the Board of Immigration Appeals (BIA). On April 2, 2002, the BIA summarily dismissed the applicant's appeal pursuant to 8 C.F.R. §1003.1(d)(2)(i)(A) of the Act.

[1] The removal proceedings were subsequently continued.

Based on the above finding, the director determined that the applicant was ineligible for TPS benefits and denied the re-registration application on June 10, 2013.

The applicant cannot collaterally attack the IJ's decision before the AAO. The BIA is the appropriate forum for disputing the IJ's decision. The applicant has the opportunity on appeal and on motion to the BIA to dispute those findings. Because the court found the applicant to have filed a frivolous application for asylum, there is a lifetime bar to any benefit. Regardless of the temporary nature of TPS, it is still a benefit. The AAO is bound by the clear language of the statute and lacks the authority to change the statute. There is no waiver available, even for humanitarian reasons, due to the applicant's ineligibility pursuant to section 208(d)(6) of the Act. Consequently, the director's decision to deny the TPS application on this ground will be affirmed.

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

ORDER: The appeal is dismissed.