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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



U.S. Citizenship  
and Immigration  
Services



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DATE: SEP 12 2012

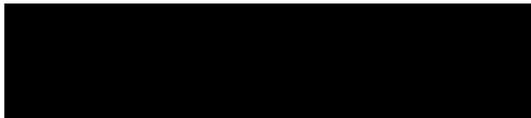
Office: CALIFORNIA SERVICE CENTER

FILE:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the California Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and action.

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

The director determined that the applicant had previously filed a frivolous asylum application and, therefore, she was permanently ineligible for any benefit under section 244 of the Act.

On appeal, counsel asserts the Board of Immigration Appeals did not affirm the immigration judge's finding that the applicant had filed a frivolous asylum 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 the applicant's Form I-589, Application for Asylum and Withholding of Removal, was filed on July 11, 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 January 25, 2011, a removal hearing was held and the applicant's Form I-589 was denied and she was ordered removed from the United States. The immigration judge (IJ) found the applicant to have filed a frivolous application for asylum and, therefore, she was permanently barred from receiving any benefits under the Act. In appealing the IJ's decision to the Board of Immigration Appeals (BIA), the issue of the IJ's frivolous finding was raised by the applicant. On December 19, 2001, the BIA dismissed the appeal with regard to the applicant's "eligibility for asylum, withholding of removal pursuant to section 241(b)(3) of the Immigration and Nationality Act; 8 U.S.C. § 1231(b)(3), and withholding of removal pursuant to the Convention Against Torture."

Because the BIA did not make a determination regarding the IJ's finding of a frivolous filed Form I-589, the AAO cannot concur with the director's findings. Therefore, the case will be remanded to the director for further adjudication of the application. The director may request any

additional evidence that she considers pertinent to assist with the determination of the applicant's eligibility for TPS. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

**ORDER:** The director's decision is withdrawn. The case is remanded for further action consistent with the above and entry of a new decision.