

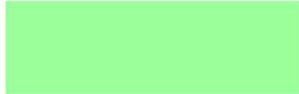


U.S. Citizenship
and Immigration
Services

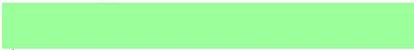
(b)(6)



DATE: Office: CALIFORNIA SERVICE CENTER

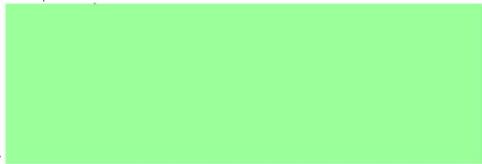
FILE: 

JAN 30 2013

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:

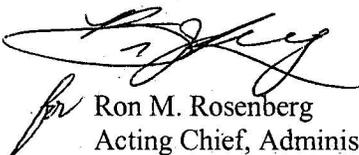


INSTRUCTIONS:

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,


for Ron M. Rosenberg
Acting 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 appeal will be dismissed.

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

On appeal, the applicant claims ineffective assistance of counsel for her asylum application and hearing before the Immigration Court. The applicant asserts, "I never knew that the Immigration Judge had found my asylum application to be frivolous. I was never told by my attorney, Mr. [REDACTED] that, once a frivolous finding is entered against an alien, you are permanently barred from ever receiving any benefits under the [Act]." The applicant further asserts that her prior attorney, Mr. [REDACTED] prepared the asylum application along with evidentiary documents for submission to the court, and that she only found out about the inconsistent dates her attorney provided on the asylum application during her removal hearing before the immigration judge. The applicant claims that the error in the application that led to a finding by the immigration judge that the applicant had filed a frivolous asylum application was committed by her attorney and that she should not be penalized by the errors committed by her attorney. The applicant then requests that her TPS application be approved because she did not intentionally and knowingly file a frivolous asylum application and that her children will suffer hardship if she has to return to Haiti.

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 –

(b)(6)

- (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.

On appeal however, the applicant claims ineffective assistance of prior representative but the applicant does not submit any of the required documentation to support an appeal based on ineffective assistance of representative.

Any appeal or motion based upon a claim of ineffective assistance of representative requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with the representative with respect to the actions to be taken and what representations the representative did or did not make to the respondent in this regard, (2) that the representative whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of representative's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). Furthermore, United States Citizenship and Immigration Services (USCIS) is not responsible for action, or inaction, of the applicant's representative.

The record reflects that a Form I-862, Notice to Appear, was issued and served on the applicant on January 5, 2006. The applicant's Form I-589, Application for Asylum and Withholding of Deportation, was filed on January 17, 2008. 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 barred from receiving any benefits under the Act. In addition, 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 transcript of hearing in the removal proceedings indicates that the applicant was advised by the immigration judge of the consequences of knowingly filing a frivolous asylum application. The immigration judge advised the applicant that if she knowingly filed a frivolous asylum application, she would be forever barred from receiving any benefits under the Act.

On June 19, 2007, a removal proceeding was held before the Immigration Court in Annapolis, Maryland. The applicant's asylum application was denied following the removal proceedings and she was ordered removed from the United States. The oral decision of the immigration judge (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.¹ The applicant appealed the IJ's decision to the Board of Immigration Appeals (BIA) and on September 22, 2009, the BIA dismissed the applicant's appeal.

On July 18, 2012, the director, California Service Center, determined that the applicant was ineligible for TPS benefits and denied the application based on her frivolous asylum application.

The applicant's statements on appeal have been considered. The AAO, however, 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.

¹ Oral Decision of the Immigration Judge, Miami, Florida, September 26, 2008.