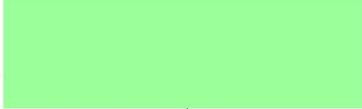




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **MAR 29 2013**

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: Self-represented

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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The re-registration 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 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 argues that the decision of the immigration judge (IJ) declaring her asylum application frivolous was erroneous. The applicant asserts that the IJ "did not carefully listen to my statement and review her proofs." The applicant states that the director had previously approved her initial application for TPS and did not evaluate the decision of the immigration judge.

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

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(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 and served on the applicant on October 30, 2002. The applicant's Form I-589, Application for Asylum and Withholding of Removal, was filed on June 18, 2003. 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.

The transcript of hearing indicates that during her removal hearings on December 7, 2002 and June 3, 2003,<sup>1</sup> the applicant was advised by the IJ of the consequences of knowingly filing a frivolous asylum application. The immigration judge advised the applicant that if she knowingly filed a frivolous application for asylum, she would be forever barred from receiving any benefits under the Act.

On August 10, 2004, a removal hearing was held and the applicant's asylum application was 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 November 23, 2005, the BIA affirmed, without opinion, the IJ's decision.

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<sup>1</sup> The removal hearing was 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 March 20, 2012.

The applicant's statements on appeal are noted. However, the director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

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. 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 re-registration 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.