



U.S. Citizenship
and Immigration
Services

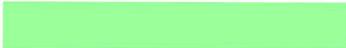
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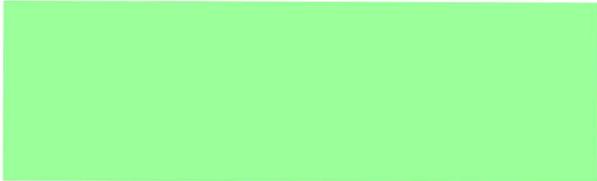
Office: CALIFORNIA SERVICE CENTER

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:

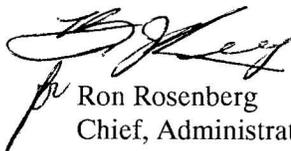


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center. The matter 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 withdrew TPS because the applicant had previously filed a frivolous asylum application and, therefore, he is permanently ineligible for any benefit under section 244 of the Act.

On appeal, counsel asserts that the Board of Immigration Appeals had administratively closed the applicant's removal proceedings, and that this closure is not a final order or removal.

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).

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 the applicant's Form I-589, Application for Asylum and Withholding of Removal, was filed on August 10, 2006. The Form I-589 advised the applicant that if it is determined that he knowingly filed a frivolous application for asylum, he would be permanently ineligible for any benefits under the Act. On September 5, 2006, at the time of his asylum interview, the applicant signed a Record of Applicant and Interpreter Oaths During An Interview, which informed him of the consequences of knowingly filing a frivolous asylum application pursuant to section 208(d)(4) of the Act. The document, in part, advised the applicant that if he knowingly filed a frivolous application for asylum, he would be permanently ineligible for any benefits under the Act. In signing this document, the interpreter for the applicant indicated that the statements had been read to the applicant and that the applicant had acknowledged understanding the statements.

On January 26, 2009, a removal proceeding was held and the applicant's applications for asylum, withholding of removal and convention against torture were denied, and he was ordered removed from the United States. The order of the immigration judge (IJ) indicates that the applicant had knowingly filed a frivolous asylum application after proper notice. Therefore, the applicant was permanently barred from receiving any benefits under the Act. The applicant appealed the IJ's decision to the Board of Immigration Appeals (BIA). In a decision dated February 23, 2010, the BIA noted that the applicant was from Haiti and that he "may be eligible to register for TPS." The BIA administratively closed the case in order to allow the applicant to apply for TPS.

Administrative closure of a case is used to temporarily remove the case from an IJ's calendar or from the Board of Immigration Appeal's docket. A case may not be administratively closed if opposed by either of the parties. Administrative closing of a case does not result in a final order. It is merely an administrative convenience which allows the removal of cases from the calendar in appropriate situations. *Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996).

The record, however, is silent as to the evidence the applicant presented to the BIA prior to its decision to administratively close the case. Specifically, was the IJ's frivolous finding raised on appeal.

On April 2, 2014, the AAO sent a notice to the applicant requesting a copy of any brief and evidence that had been submitted with his Form EOIR-29, Notice of Appeal before the Board of Immigration Appeals. The applicant was granted 30 days to submit the requested documents. To date, the requested documents have not been submitted.

In the instant case, the applicant did register for TPS and was granted the benefit; however, it was later determined that the applicant was not eligible for the benefit sought. 8 C.F.R. § 244.14(a)(1). Section 208(d)(6) of the Act provides if an applicant has filed a frivolous application, he is permanently ineligible for *any* benefits under the Act. Regardless of the temporary nature of TPS, it is still a benefit. The applicant has failed to provide the requested information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Therefore, the AAO lacks discretion or a statutory basis to approve the applicant's TPS application. 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 withdraw TPS 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.