



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 3 1 2015**

FILE: [REDACTED]

APPLICATION RECEIPT: [REDACTED]

FORM I-290B RECEIPT: [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:

NO REPRESENTATIVE OF RECORD

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

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the application. 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 is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a. On December 2, 2013, the director denied the application because the applicant's previously granted TPS was withdrawn as a result of her having filed a frivolous asylum application. The Director found the applicant permanently ineligible for TPS and ineligible to seek re-registration.

On appeal, the applicant asks the Director to reconsider her application for humanitarian reasons.

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)(4) of the Act states, in pertinent part:

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

....

- (6) Frivolous applications. – 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 or about June 6, 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.

An immigration judge denied the applicant's applications for asylum, withholding of removal, and protection under the Convention against Torture on August 10, 2004, and ordered her removed from the United States. The order expressly indicates that the applicant had knowingly filed a frivolous asylum application after proper notice. Therefore, the applicant is permanently barred from receiving any benefit under the Act. The Board of Immigration Appeals affirmed the immigration judge's decision on November 23, 2005.

The applicant's statements on appeal have been considered. However, no statutory authority permits considering, for humanitarian reasons, any application for a benefit under the Act after an applicant specifically was found to have filed a frivolous asylum application. Consequently, the Director's decision to deny the TPS application on this ground will be affirmed.

An applicant 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 not met this burden.

ORDER: The appeal is dismissed.