



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-T-

DATE: SEPT. 10, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

APPLICATION: FORM I-821, APPLICATION FOR TEMPORARY PROTECTED STATUS

The Applicant, a native and citizen of Haiti, was granted temporary protected status (TPS). *See* Immigration and Nationality Act (the Act) § 244, 8 U.S.C. § 1254(a). The Director, California Service Center, denied the application for re-registration. The matter is now before us on appeal. The appeal will be dismissed.

On May 20, 2014, the Director denied the application for re-registration because an immigration judge determined that the Applicant knowingly filed a frivolous application for asylum, rendering the Applicant permanently ineligible for any benefits under the Act.

On appeal, the Applicant asserts that at the time of her asylum hearing she did not speak or understand the English language and that the individual who helped to file her asylum application included incorrect information. The Applicant asserts that she did not intend to file a frivolous asylum application. The Applicant requests that her application be reconsidered and approved due to the conditions in 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 –
 - (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.

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The record reflects that a Form I-589, Application for Asylum and Withholding of Removal, was filed by the Applicant on May 1, 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. A Form I-862, Notice to Appear, was issued and served on the Applicant on June 20, 2000.

On December 3, 2001, a removal hearing was held, after which the Applicant's applications for asylum, withholding of removal and convention against torture were denied, 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 knowingly filed a frivolous application for asylum, permanently barring the Applicant from receiving any benefits under the Act. The Applicant appealed the IJ's decision to the Board of Immigration Appeals (BIA). On July 31, 2003, the BIA affirmed the IJ's decision without opinion.

The Applicant filed this application for re-registration on April 14, 2014.¹ Based on the immigration judge's frivolous finding, the Director determined that the Applicant was ineligible for TPS benefits and denied the application for re-registration.

The Applicant's statements on appeal have been considered. However, we are bound by the clear language of the statute and 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 application for re-registration on this ground will be affirmed.

In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of A-T-*, ID# 13942 (AAO Sept. 10, 2015)

¹ The Applicant's TPS was withdrawn and an earlier application for re-registration was denied on May 29, 2013, based on the IJ's finding that the Applicant had knowingly filed a frivolous asylum application. The Applicant filed an appeal from that decision. We concurred with the Director's finding and dismissed that appeal on January 17, 2014.