



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

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

MATTER OF F-B-

DATE: APR. 26, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Applicant, a native of The Bahamas and citizen of Haiti, seeks temporary protected status (TPS). *See* Immigration and Nationality Act (the Act) section 244, 8 U.S.C. § 1254a. Temporary protected status provides lawful status and protection from removal for foreign nationals, of specifically designated countries, who register during designated periods, satisfy country-specific continuous residence and physical presence requirements, are admissible to the United States, are not firmly resettled in another country, and are not subject to certain criminal- and security-related bars.

The Director, California Service Center, denied the application. The Director concluded that the Applicant was inadmissible to the United States and is ineligible for TPS. The Director noted that the Applicant was requested to submit a Form I-601 to apply for a waiver of his inadmissibility for misrepresenting his birthplace on previous TPS applications, but the Applicant did not submit the waiver application.

The matter is now before us on appeal. With the appeal the Applicant submits additional evidence. He asserts that he has met the requirements for TPS and although he was born in The Bahamas, he is not recognized as a national or citizen of The Bahamas, because his mother is Haitian and he carries the nationality of his mother.

Upon *de novo* review, we will withdraw the Director's decision. The matter is remanded to the Director, California Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision which, if adverse, shall be certified to us for review.

#### I. LAW

The Applicant is seeking TPS. Section 244(c)(1) of the Act and the related regulations in 8 C.F.R. § 244.2, provides that an applicant is eligible for TPS only upon establishing that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act . . . .

Section 101(a)(21) of the Act provides that the term "national" means a person owing permanent allegiance to a state.

In applying for TPS, an applicant must submit evidence of his nationality. 8 C.F.R. § 244.9 provides, in pertinent part:

- (a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.
  - (1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of:
    - (i) Passport;
    - (ii) Birth certificate accompanied by photo identification; and/or
    - (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

The Director found the Applicant inadmissible under section 212(a)(6)(C)(i) of the Act based on the Applicant's misrepresentation of his birthplace on his prior TPS applications. Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

## II. ANALYSIS

The issue in this proceeding is whether the Applicant is ineligible for TPS because he made a material misrepresentation, specifically, misstating his birthplace on his TPS application, and whether he therefore is inadmissible under section 212(a)(6)(C)(i) of the Act. On appeal, the Applicant contends that he is eligible for TPS, because although he indicated that he was born in Haiti instead of The Bahamas, his actual place of birth, he is not a citizen of The Bahamas, as his parents are Haitian and not Bahamian citizens. We find that the record, which includes evidence of the Applicant's Haitian nationality, establishes that the Applicant's misrepresentation of his birthplace on his TPS application is not material and that he is not inadmissible; therefore he does not require a waiver of inadmissibility.

### A. Eligibility

As stated above, the Applicant has been found ineligible for TPS under section 244(c)(1)(A) of the Act.

The burden of proof is upon the applicant to establish that he is eligible for TPS. *See* 8 C.F.R. § 244.9(a)(3). Applicants shall submit all documentation as required in the instructions or requested by U.S. Citizenship and Immigration Services (USCIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). To meet his burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. *Id.*

To qualify for TPS, the applicant must provide evidence that he is a national of a state designated under section 244(b)(1) of the Act or, in the case of an applicant having no nationality, is a person who last habitually resided in such designated state. *See* section 244(c)(1)(A) of the Act. Section 244(b)(1) of the Act contains the requirements for the designation of a foreign country for TPS purposes.

On January 21, 2010, the Secretary designated Haiti as a country eligible for TPS. This designation allowed nationals of Haiti who have continuously resided in the United States since January 12, 2010, and who have been continuously physically present in the United States since January 21, 2010, to apply for TPS. On May 19, 2011, the Secretary re-designated Haiti for TPS eligibility which became effective on July 23, 2011. This re-designation allowed nationals of Haiti who have continuously resided in the United States since January 12, 2011, and who have been continuously physically present in the United States since July 23, 2011, to apply for TPS. The initial registration period for the re-designation began on May 19, 2011, and ended on November 15, 2011. On March 3, 2014, the Secretary announced an extension of the TPS designation for Haiti until January 22, 2016, upon the Applicant's re-registration during the requisite time period. On August 25, 2015, the Secretary announced an 18-month extension of the TPS designation for Haiti until July 22, 2017, upon the Applicant's re-registration during the requisite time period.

(b)(6)

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The Applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured TPS by fraud or willful misrepresentation. Specifically, the Director found that the Applicant misstated his birthplace on his initial TPS application and on two previous re-registration applications, as [REDACTED] Haiti; and with his initial TPS application, he submitted a copy of his passport showing that he was born in Haiti. However, in the current re-registration application for TPS and on his Form I-485, Application to Register Permanent Residence or Adjust Status, the Applicant indicated that his place of birth is [REDACTED] Bahamas, and he submitted a certificate indicating that he was born in The Bahamas. The Director determined that the Applicant had made a material misrepresentation concerning his birthplace. The Director notified the Applicant that he must submit a Form I-601, Application for Waiver of Grounds of Admissibility, and when the Applicant did not submit a Form I-601, the Director denied the re-registration application.

On appeal, the Applicant contends that the Director erred in denying his TPS application for misrepresentation. The Applicant does not dispute that he misstated his birthplace on his previous TPS applications. He contends, however, that his misstatement was not material because, although he was born in The Bahamas, he is not a national or citizen of that country under Bahamian law.

The record establishes that the Applicant was born in the Bahamas, of Haitian parents, and is a national of Haiti.<sup>1</sup> The record reflects that on [REDACTED] 1994, at age [REDACTED] the Applicant was apprehended on entry into United States with his mother, and they were placed in immigration proceedings. On [REDACTED] 2006, an immigration judge ordered the Applicant deported to The Bahamas, or in the alternative to Haiti. The record of proceeding includes an immigration judge's order, which reflects a finding that the Applicant was born in The Bahamas of Haitian parents and is a national of Haiti. The record also includes the Applicant's Bahamian birth certificate, with the handwritten phrase "Supplementary Register," under the heading "Registrar General-Bahamas Birth Certificate," also naming his parents; and a Bahamas certificate of identity,<sup>2</sup> showing the Applicant's place of birth as [REDACTED] Bahamas, and his nationality of origin as Haiti. The record also includes the Applicant's father's Haitian birth certificate.

For a misrepresentation to be willful, it must be determined that the applicant was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented

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<sup>1</sup> The Constitution Of The Commonwealth Of The Bahamas Chapter II, Citizenship, states at Section 7, in pertinent part:

(1) A person born in The Bahamas after 9th July 1973 neither of whose parents is a citizen of The Bahamas shall be entitled, upon making application on his attaining the age of eighteen years or within twelve months thereafter in such manner as may be prescribed, to be registered as a citizen of The Bahamas:

Provided that if he is a citizen of some country other than The Bahamas he shall not be entitled to be registered as a citizen of The Bahamas under this article unless he renounces his citizenship of that other country, takes the oath of allegiance and makes and registers such declaration of his intentions concerning residence as may be prescribed.

<sup>2</sup> Certificates of identity are issued to individuals born in the Bahamas after July 10, 1973, to non-Bahamian parents. See [http://www.bahamas.gov.bs/wps/wcm/connect/mof\\_content/internet/all+services/c/applying+for+a+certificate+of+identification](http://www.bahamas.gov.bs/wps/wcm/connect/mof_content/internet/all+services/c/applying+for+a+certificate+of+identification)

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material facts. *See generally Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956). To be willful, a misrepresentation must be made with knowledge of its falsity. 7 I&N Dec. at 164. To determine whether a misrepresentation was willful, we examine the circumstances as they existed at the time of the misrepresentation, and we “closely scrutinize the factual basis” of a finding of inadmissibility for fraud or misrepresentation because such a finding “perpetually bars an alien from admission.” *Matter of Y-G-*, 20 I&N Dec. 794, 796-97 (BIA 1994); *see also Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998) and *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28-29 (BIA 1979).

“[T]he test of whether concealments or misrepresentations are “material” is whether they can be shown by clear, unequivocal, and convincing evidence to have been predictably capable of affecting, *i.e.*, to have had a natural tendency to affect, the Immigration and Naturalization Service's decisions.” *Kungys v. United States*, 485 U.S. 759, 760 (1988). The Board of Immigration Appeals (the Board) has held that a misrepresentation is material if either the alien is excludable on the true facts, or the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded. *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

While willful, the Applicant's claim that Haiti was his birthplace is not material, as it cannot be shown by clear, unequivocal, and convincing evidence to have been predictably capable of affecting his eligibility for TPS, given other evidence showing he is a national of Haiti. The record, which was created when the Applicant was a child and existed before he applied for TPS, contains evidence of the Applicant's Bahamian birthplace and his Haitian nationality. It does not support finding that his misstatement of his birthplace on previous TPS applications is material.

We do not find the Applicant inadmissible under section 212(a)(6)(C)(i) of the Act, because the record does not establish that his misrepresentation to obtain an immigration benefit under the Act was material. The evidence in the record of the Applicant's Haitian nationality predates the filing his TPS applications and his Form I-485. The record includes no indication that the Applicant is a dual citizen or returned to the Bahamas after his arrival in the United States as a child in 1994. The record therefore establishes the Applicant's eligibility for TPS as a national of Haiti.

As the Applicant's representation of his birthplace as Haiti is not material given the evidence of his nationality in the record, the Applicant is not inadmissible under section 212(a)(6)(C) of the Act.

#### B. Discretion

The Applicant has established that he meets the eligibility requirements for TPS under section 244(c) of the Act. *See* 8 C.F.R. § 244.2 (providing that an applicant may be granted TPS in the discretion of the director). The Applicant has acknowledged the error concerning his birthplace, which as discussed above, is not a material misrepresentation, and the record reflects no other reasons why the Applicant should not be granted TPS.

### III. CONCLUSION

An applicant for TPS has the burden of proving that he or she meets the requirements for this benefit and is otherwise eligible under the provisions of section 244 of the Act. The Applicant has established eligibility for TPS.

The validity period of the Applicant's fingerprint check, however, has expired. Accordingly, the case will be remanded for the purpose of sending the Applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Following completion of this requirement, the Director will render a new decision. Should the decision be adverse, the Director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i).

**ORDER:** The decision of the Director, California Service Center, is withdrawn. The matter is remanded to the Director, California Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of F-B-*, ID# 15854 (AAO Apr. 26, 2016)