



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

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

MATTER OF E-G-

DATE: MAR. 30, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Applicant, a native 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 did not establish eligibility for late registration.

The matter is now before us on appeal. On appeal, the Applicant asserts that she is eligible for late initial filing as her asylum application was subject to further review during the initial registration period as evidenced by the acceptance of her motion by the Board of Immigration Appeals (the Board) on August 9, 2013. The Applicant states she is eligible for TPS because the Board vacated its finding regarding a frivolous asylum application.

Upon *de novo* review, we will dismiss the appeal.

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 is eligible for TPS only if such alien establishes 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;
- (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; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the FEDERAL REGISTER, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or
 - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

To meet the initial registration requirements for the redesignation in 8 C.F.R. § 244.2(f)(1), Haitian applicants must have filed TPS applications during the initial registration period, May 19, 2011, through November 15, 2011. If applicants did not file their initial TPS applications during this time period, they must meet the late registration requirements as stated above in 8 C.F.R. § 244.2(f)(2). Specifically, to qualify for late registration, the applicant must provide evidence that during the initial registration period for redesignation (May 19, 2011 through November 15, 2011) the applicant fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above. If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

The record reflects that on April 4, 2002, the Applicant filed a Form I-589, Application for Asylum and for Withholding of Removal. On May 22, 2003, a removal hearing was held, after which the Applicant's applications for asylum, withholding of removal and convention against torture were denied, and the Applicant 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 under section 208(d) of the Act, 8 U.S.C. § 1158(d). The Applicant appealed the IJ's

decision to the Board. On March 9, 2004, the Board affirmed the IJ's decision without opinion. On August 8, 2013, the Applicant filed a motion to reopen before the Board.¹

Where there is a fundamental change in law relevant to an alien's proceedings, the Board may exercise its authority to reopen proceedings *sua sponte*. *Matter of G-D-*, 22 I&N Dec. 1132 (BIA 1999); 8 C.F.R. § 1003.2(a). Subsequent to its decision in the Applicant's removal proceedings, the Board in *Matter of B-Y-*, 25 I&N Dec. 236 (BIA 2010) clarified the procedure for determining whether an asylum application is frivolous. In light of its decision in *Matter of B-Y-*, the Board, on October 28, 2013, reconsidered the Applicant's matter *sua sponte* and vacated the finding that the Applicant had knowingly filed a frivolous asylum application. The Board did not reconsider its prior affirmance of the IJ's adverse credibility determination as it related to the Applicant's application for asylum. 8 C.F.R. § 1003.2(a).

The Applicant's Forms I-821 filed March 8, 2010, and November 27, 2012, were denied as an immigration judge had determined that the Applicant knowingly filed a frivolous application for asylum, rendering the Applicant permanently ineligible for any benefits under the Act under section 208(d) of the Act. A subsequent appeal, filed from the denial of the initial Form I-821, was rejected as untimely on September 7, 2010. A third Form I-821, filed on November 27, 2012, was denied under the late registration provisions outlined in 8 C.F.R. § 244.2(f)(2), was denied by the Director as the Applicant had not established eligibility for late registration. A subsequent appeal filed from the denial of the third Form I-821 was dismissed on April 25, 2014, and a subsequent motion from the dismissal of the appeal was denied on July 1, 2014.

The Applicant filed the current Form I-821 on July 23, 2014, and indicated that she was re-registering for TPS as she claimed that she was granted TPS. As there was no evidence within USCIS records that TPS has been granted to the Applicant, the Form I-821 was treated as a new filing for TPS under the late registration provisions outlined in 8 C.F.R. § 244.2(f)(2).

In response to a request for evidence dated March 3, 2015, which requested the Applicant to submit evidence establishing eligibility for late registration, as set forth in 8 C.F.R. § 244.2(f)(2) or (g), the Applicant submitted copies of immigration documents and a brief relating to earlier TPS applications; the Board's decision of October 28, 2013, vacating the frivolous asylum finding; and a Form I-862, Notice to Appear, served upon the Applicant on May 30, 2002.

Because the Applicant did not comply with the time limitations in which to file a motion,² the Applicant's administrative remedies before the Board ended March 9, 2004. Contrary to the Applicant's claim, her asylum application was not pending further review as there was no appeal and/or

¹ A subsequent motion filed before the Board on January 14, 2016, is currently pending.

² A motion to reopen before the Board must be filed no later than 90 days after the date on which the final administration decision was rendered in the proceedings sought to be reopened. 8 C.F.R. 1003.2(c)(2). A motion to reconsider a decision must be filed within 30 days after the mailing of the Board's decision. 8 C.F.R. 1003.2(a)(2).

motion that had been filed and pending during the initial registration periods for the designation and re-designation for Haiti. 8 C.F.R. § 244.2(f)(2). The removal of the Applicant's ineligibility under section 208(d)(6) of the Act does not render her eligible for late registration as it is not a qualifying condition under 8 C.F.R. § 244.2(f)(2), nor does it reflect that the Applicant's asylum application is still pending or subject to further review.

The provisions for late registration outlined in 8 C.F.R. § 244.2(f)(2) ensure that TPS benefits are made available to individuals who did not register during the initial registration period for the various circumstances specifically outlined in the regulations. Throughout the application process, the Applicant has not established that she has met the provisions described in 8 C.F.R. §§ 244.2(f)(2) or (g) for late registration. Consequently, the Director's decision that the Applicant had not established eligibility for late registration 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 E-G-*, ID# 15637 (AAO Mar. 30, 2016)