



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

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

In Re: 28838702

Date: NOV. 15, 2023

Appeal of Vermont Service Center Decision

Form I-821, Application for Temporary Protected Status

The Applicant, a national of Honduras, seeks review of a decision withdrawing her Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a, and denying her TPS re-registration request.

The Director of the Vermont Service Center withdrew TPS, concluding that the Applicant was ineligible for such status because she was 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 fraud or misrepresentation. On appeal, the Applicant contests the Director's inadmissibility finding and reasserts eligibility for TPS.

Once a noncitizen has been granted TPS, U.S. Citizenship and Immigration Services (USCIS) has the burden to show why TPS should be withdrawn. *See generally* 8 C.F.R. § 244.14. We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we conclude that USCIS has not met this burden. We will therefore withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

USCIS may withdraw the status of a noncitizen granted TPS under section 244 of the Act at any time if USCIS determines that the noncitizen was not in fact eligible for such status at the time TPS was granted or later becomes ineligible. 8 C.F.R. § 244.14(a)(1).

Generally, a noncitizen is ineligible for TPS if they are inadmissible to the United States as an immigrant. Section 244(c)(1)(A)(iii) of the Act. Any noncitizen 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 the Act is inadmissible. Section 212(a)(6)(C)(i) of the Act.

TPS applicants who are inadmissible for fraud or misrepresentation may seek a waiver under section 244(c)(2) of the Act.

II. ANALYSIS

There is no dispute that the Applicant is a national and citizen of Honduras, a TPS-designated country.¹ The only issue on appeal is whether the Applicant is inadmissible to the United States for fraud or misrepresentation of a material fact and ineligible for TPS on that basis. We have reviewed the entire record and conclude that it does not support such a finding.

The record reflects that the Applicant entered the United States without having been inspected or admitted or paroled in 1997. When apprehended by U.S. Border Patrol Agent, she identified herself as a national of Honduras, but misrepresented her last name and date of birth. The Applicant was subsequently placed in removal proceedings as a noncitizen present in the United States without being admitted or paroled; because she did not attend her scheduled removal hearing in [] 1998, an Immigration Judge ordered her removed to Honduras in absentia. A year later, the Applicant filed an initial TPS request under her true identity, and USCIS approved the request in 2002. The Applicant has been re-registering her TPS since that time, as required. After she filed the instant Form I-821 to again re-register her status, the Director issued a notice of intent to withdraw TPS (NOIW), stating that because the Applicant did not previously disclose that she was ordered removed from the United States under a different identity she was inadmissible under section 212(a)(6)(C)(i) of the Act and, consequently, ineligible for TPS. The Director informed the Applicant that she could seek a waiver of this inadmissibility by filing Form I-601, Application for Waiver of Grounds of Inadmissibility. Because the Applicant did not respond to the NOIW, the Director withdrew her TPS on the grounds proposed therein and denied her TPS re-registration request.

The Applicant asserts that the Director's determination of inadmissibility was in error, because her failure to disclose the use of another name and the previous removal order does not constitute a misrepresentation of a material fact relevant to her eligibility for TPS. She states that a "material" misrepresentation is a false representation concerning a fact that is pertinent to a person's eligibility for an immigration benefit sought, and having been ordered removed from the United States does not preclude a grant of TPS. Having considered the specific circumstances in this case, we agree.

A misrepresentation is "material" within the meaning of section 212(a)(6)(C)(i) of the Act when it tends to shut off a line of inquiry that is relevant to the noncitizen's admissibility and that would predictably have disclosed other facts relevant to their eligibility for a visa, other documentation, or admission to the United States. *Matter of D-R-*, 27 I&N Dec. 105, 113 (BIA 2017); *see also generally* 8 *USCIS Policy Manual* J.3(A)(1), <https://www.uscis.gov/policy-manual> (providing that in making a finding of inadmissibility under section 212(a)(6)(C)(i) of the Act, there must be evidence in the record that would lead a reasonable person to conclude that an applicant used fraud or that they willfully misrepresented a material fact in an attempt to obtain a visa, other documentation, admission to the United States, or any other immigration benefit).

Here, the Director did not explain in the NOIW or in the withdrawal notice how the Applicant's failure to disclose another identity and the removal order on her prior TPS applications was material to and would have affected her eligibility for such status. Rather, in withdrawing the Applicant's TPS the

¹ *See Designation of Honduras Under Temporary Protected Status*, 64 Fed. Reg. 524 (Jan. 5, 1999).

Director stated that USCIS records, including the Applicant's fingerprint and biometric data, established that "the identities in these records are one and the same individual."

Although having a prior removal order or being in removal proceedings may affect a noncitizen's eligibility for some immigration benefits,² such a misrepresentation generally does not impact a noncitizen's eligibility for TPS.

Grounds of ineligibility for TPS are set forth in section 244 of the Act, and include mandatory bars to asylum described in section 208(b)(2)(A) of the Act, 8 U.S.C. § 1158(b)(2)(A), convictions of certain criminal offenses, and specific grounds of inadmissibility that may not be waived for TPS purposes. Having an outstanding final order of removal or being in removal proceedings is not listed in section 244 of the Act as a ground which would render an applicant statutorily ineligible for TPS or inadmissible.

Furthermore, USCIS and Executive Office for Immigration Review share jurisdiction over certain initial TPS applications, and a noncitizen who is in removal proceedings³ may file their initial TPS application with USCIS, unless they have been placed in removal proceedings on a ground or grounds that would make them statutorily ineligible for TPS. 8 C.F.R. § 244.7. The record in this case does not show that the Applicant was placed in removal proceedings on any such grounds, or that USCIS otherwise did not have jurisdiction to grant her initial TPS request in 2002.

In view of the above, we conclude that the record does not currently support a conclusion that the Applicant's failure to disclose a prior removal order under a different name rendered her inadmissible for fraud or misrepresentation and ineligible for TPS at the time USCIS granted her such status. We will therefore withdraw the Director's inadmissibility finding and remand the matter for the Director to determine whether the Applicant has met eligibility criteria for TPS re-registration and to enter a new decision, accordingly.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

² For example, USCIS lacks jurisdiction over adjustment of status applications filed by noncitizens who have been placed in removal proceedings (other than as arriving aliens). *See* 8 C.F.R. §§ 245.2 and 1245.2.

³ A noncitizen is considered to be "in removal proceedings" from the time the charging document is filed with the Immigration Court until the removal order is executed. 8 C.F.R. § 1245.1(c)(8).