U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8468048

Date: SEPT. 29, 2022

Appeal of Vermont Service Center Decision

Form I-821, Application for Temporary Protected Status

The Applicant 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.

The Director of the Vermont Service Center denied the Applicant's TPS re-registration request and withdrew TPS concluding that the Applicant was ineligible for such status because she was inadmissible to the United States under section 212(a)(3)(B) of the Act, 8 U.S.C. § 1182(a)(3)(B), for providing material support to terrorist organizations in El Salvador. The Director further determined that the Applicant did not qualify for an exemption to this inadmissibility because she did not fully disclose the nature and scope or her activities, contradicted her previous testimony in asylum proceedings, and denied providing support to those organizations.

On appeal, the Applicant asserts that the Director erred in relying on her alleged testimony at the asylum interview and finding her claims of not supporting any subversive groups to be not credible. In the alternative, the Applicant argues that the Director should have considered whether she was eligible for the "insignificant material support" exemption under section 212(d)(3)(B)(i) of the Act.

The Applicant has the burden of proof to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review we will dismiss the appeal.

I. LAW

Noncitizens granted TPS must re-register periodically during re-registration periods announced by U.S. Citizenship and Immigration Services (USCIS) and in accordance with USCIS instructions. 8 C.F.R. § 244.17(a). To re-register, they must complete the Form I-821 in accordance with the form instructions, and submit all documentation as required in the instructions or requested by USCIS. 8 C.F.R. §§ 244.6(a), 244.9(a). USCIS may withdraw the status of a noncitizen granted TPS under section 244 of the Act at any time if the noncitizen does not re-register without good cause. 8 C.F.R. § 244.14(a)(3). USCIS may also withdraw TPS if the noncitizen was not in fact eligible at the time TPS was granted or later becomes ineligible. 8 C.F.R. § 244.14(a)(1).

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 their burden of proof, applicants must provide supporting documentary evidence of eligibility apart from their own statements. *Id.*

Generally, a noncitizen is ineligible for TPS if he or she is inadmissible to the United States as an immigrant. Section 244(c)(1)(A)(iii) of the Act. Any individual who has engaged or engages in a terrorist activity, as defined in section in section 212(a)(3)(B)(iv) of the Act is inadmissible to the United States.

"Terrorist activity" is defined in relevant part as "an act that the actor knows, or reasonably should have known, affords material support, including safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation, or identification, weapons . . ., explosives, or training . . . for the commission of terrorist activity . . . to any individual who the actor knows, or reasonably should have known has committed or plans to commit a terrorist activity [or] to a terrorist organization." Section 212(a)(3)(B)(iv)(VI) of the Act.

The Act describes three categories of "terrorist organizations": Tier I (an organization designated as terrorist by the Secretary of Homeland Security), Tier II (an organization designated as terrorist by the Secretary of State in consultation with or upon the request of Attorney General or the Secretary of Homeland Security), and Tier III (an organization consisting of a group of at least two individuals that engages in terrorist activity). Section 212(a)(3)(B)(vi) of the Act.

Section 212(a)(3)(B)(iv)(VI)(dd) of the Act provides an exception to the material support bar in case of a Tier III terrorist organization for noncitizens who demonstrate by clear and convincing evidence that they did not know, or should not reasonably have known that such organization was a terrorist organization.

In addition, pursuant to a separate provision of the Act the Secretary of Homeland Security, in his sole unreviewable discretion may waive the application of the terrorist related inadmissibility grounds in certain circumstances after consulting with the Secretary of State and the Attorney General. Section 212(d)(3)(B)(i) of the Act.

II. ANALYSIS

The issue on appeal is whether the Applicant has demonstrated that she is not subject to the terrorist-related inadmissibility ground identified by the Director or in the alternative that she qualifies for an exemption. We have reviewed the entire record, including the Applicant's statements on appeal, and for the reasons explained below conclude that she has not established either scenario.

A. Relevant Facts and Procedural History

The record reflects that in 1999 the Applicant filed a Form I-821 requesting TPS under Honduran designation.[1] On that Form I-821, the Applicant represented that she was born in Honduras in [redacted] 1969 and that she last entered the United States without inspection and admission or parole in April

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

1994. USCIS approved the Applicant's request in February 2000, and she has been re-registering her status since that time, as required. On her most recent re-registration request, the Applicant revealed that she previously used another name, that she resided in El Salvador as a refugee from August 1969 until July 1986, and that she was in removal proceedings.

The Director subsequently issued an intent to deny (ITD) asking the Applicant to provide additional information concerning the removal proceedings and to explain, in part whether she was a dual national of Honduras and El Salvador. In response, the Applicant submitted a statement that she resided in El Salvador until July 1986, and that she also had Salvadoran citizenship through her mother. The Director then issued a request for evidence (RFE) advising the Applicant that the record contained two birth certificates registered in Honduras and El Salvador reflecting two different dates of birth, and that additional documents were needed to resolve the inconsistent information. The Applicant responded by submitting her original birth certificates and a declaration that her mother registered her birth in both Honduras and El Salvador, except she provided an incorrect date and place of birth when registering her birth in El Salvador. The Applicant also stated that she lived in El Salvador until April 1994, but that she also spent some time in Honduras when she gave birth to her children in 1989 and 1991. She explained that she entered the United States in April 1994 and applied for asylum as a Salvadoran citizen because she was a dual citizen. In a subsequent RFE the Director informed the Applicant that although she had sufficiently resolved the issue of her identity and nationality[2] further review of the record indicated that she may be inadmissible under section 212(a)(3)(B) of the Act because her testimony in asylum proceedings indicated that while in El Salvador she was a [redacted] owner and paid money to a union of merchants she later learned was a subversive group, that the subversive groups in her country were Farabundo Marti National Liberation Front (FMLN), the Revolutionary Democratic Front (FDR), and Fuerzas Populares de Liberación Farabundo Martí (FPL),[3] that guerillas forced her to dig fox holes for them, and that she may have given them food.

In her 2018 response to the Director's RFE, the Applicant explained that in late 1989 guerillas came to her town and declared that they had taken over El Salvador. She recounted going to her mother's house the next day and seeing guerillas who asked some boys passing by to take stones out of fences and pile them in the middle of the street, which she later described as barricades. The Applicant asserted that the guerillas did not ask her to do anything because she had her infant son in her arms. She further claimed that she never dug fox holes for the guerillas, nor did she give money or goods to FMLN or any other guerilla group. She averred that the guerillas never asked her to do anything and that they had food and medicine inside the church. The Applicant also stated that although a group of about 6-8 people would walk the streets trying to get business owners "to form a directive" she never gave them money and they never forced her to do so.

The Director found those statements inconsistent with the Applicant's 1996 testimony in asylum proceedings that the guerillas forced her to dig foxholes, that she may have given them food, and that the money she paid as a business owner went to the merchant union, which she later learned was a subversive group that provided protection from illegal government activity. The Director further determined that the Applicant's 1996 testimony was more credible, and withdrew the Applicant's TPS concluding that she was inadmissible under section 212(a)(3)(B)(iv) of the Act because she "engaged

[2] We will not disturb this determination.
[3] The Director incorrectly referred to this organization as "FDL."

in terrorist activity by providing material support." Lastly, the Director advised the Applicant that because it appeared that she was not forthcoming and did not fully disclose "the nature and circumstances of each activity within the scope of section 212(a)(3)(B) of the Act" she was not eligible to receive any applicable exemption of the terrorist-related inadmissibility grounds.

On appeal, the Applicant states that the only possible way she may have provided aid to terrorists in El Salvador was by giving food to guerillas who had taken over her town in 1989 and that she was never asked to dig foxholes. She states further that the Director erred in relying upon the alleged testimony from her asylum interview and finding her current claims to be not credible. In the alternative, the Applicant asserts that the Director should have considered whether she was eligible for the "insignificant material support" exemption pursuant to section 212(d)(3)(B)(i) of the Act.

B. Material Support Bar

A noncitizen provides "material support" to a terrorist organization if his or her act has a logical and reasonably foreseeable tendency to promote, sustain, or maintain the organization, even if only to a *de minimis* degree, regardless of whether the support was intended to aid the organization. *Matter of A-C-M-*, 27 I&N Dec. 303, 308 (2018) (holding that an individual who was kidnapped by guerillas in El Salvador in 1990 and coerced into undergoing weapons training and performing forced labor in the form of cooking, cleaning, and washing their clothes, afforded material support to the guerillas in continuing their mission of armed and violent opposition to the Salvadoran Government, and was therefore inadmissible under section 212(a)(3)(B)(iv) of the Act).[4]

1. The Applicant's Interactions with the Union of Merchants

As an initial matter, the record before us does not currently support a finding that the Applicant is inadmissible under section 212(a)(3)(B)(iv) of the Act for making payments to the union of merchants while she was a business owner in El Salvador. The record reflects the Applicant's testimony at the 1996 asylum interview that from 1992 until March 1994 she owned a business in El Salvador where [redacted] According to the asylum officer's interview notes, the Applicant recalled arguing in 1994 with a woman whom she had previously seen with a man who collected money from all the store owners; the money went to the union of merchants and provided protection from illegal government activity. The Applicant testified that she later learned this woman was a member of a subversive group, and that the subversive groups in her country were FMLN, FPL, and FDR.

We note that FMLN has not been considered an undesignated or Tier III terrorist organization after January 16, 1992, because it has been the leading party in the government of El Salvador since that date. *See* USCIS Policy Memorandum PM-602-0082, *Implementation of New Discretionary Exemption Under Immigration and Nationality Act (INA) Section 212(d)(3)(B)(i) for Activities and Associations Relating to the Farabundo Marti National Liberation Front (FMLN) or to the Nationalist Republican Alliance (Alianza Republicana Nacionalista, or ARENA)* 2 (May 2, 2013).[5] FPL, in turn,

[4] *See also Barahona v. Holder*, 691 F.3d 349, (4th Cir. 2012) (finding that the Board of Immigration Appeals did not err in determining that an individual's support of Salvadoran guerrillas in the 1980s fell within the material support bar).

[5] https://www.uscis.gov/laws-and-policy/other-resources/terrorism-related-inadmissibility-grounds-trig/terrorism-related-inadmissibility-grounds-trig-group-based-exemptions.

was an independent guerilla movement throughout the 1977-1980 period.[6] Later, in January 1980, the FPL allied itself with a group of other guerrilla organizations to form the Revolutionary Coordination of the Masses (CRM). *Id.* In April 1980 the CRM joined the Revolutionary Democratic Front (FDR) to form the FMLN-FDR. *Id.* Thus, it appears that as of 1980 neither FDL nor FDR were independent organizations, but rather parts of FMLN which, as stated was not considered a terrorist organization during the relevant 1992-1994 period when, according to the Applicant's 1996 testimony in asylum proceedings she was a business owner in El Salvador. Thus, any payments she may have made to a subversive organization she believed was associated or part of FMLN, FPL, or FDR between 1992 and 1994 would likely not fall within the scope of the material support bar.

2. The Applicant's Interactions with Salvadorean Guerillas

Nevertheless, the record indicates that the Applicant is inadmissible under section 212(a)(3)(B)(iv) of the Act for providing material support to the guerillas in 1989. Specifically, the record shows that at her asylum interview in 1996 the Applicant testified that some people asked her to dig foxholes in 1989, but "gave food only." Although the Applicant denied this in her 2018 response to the RFE, she now states that she may have given food to guerillas in 1989, but that it was the only aid she gave them. As stated, even *de minimis* support to a terrorist organization is sufficient to trigger the inadmissibility under section 212(a)(3)(B)(iv) of the Act.

The Applicant concedes on appeal that she may be inadmissible for giving food to the guerillas, but asserts that she is eligible for a discretionary exemption because the material support she provided them was insignificant.

C. Eligibility for Limited Material Support Exemption

In February 2014, the Secretaries of Homeland Security and State, in consultation with the Attorney General, exercised their discretionary authority not to apply the material support inadmissibility ground to certain applicants who provided certain limited material support to an undesignated terrorist organization, or to a member of such an organization. *See Exercise of Authority Under Section 212(d)(3)(B)(i) of the Immigration and Nationality Act*, 79 Fed. Reg. 6914 (Feb. 5, 2014). To qualify for the exemption, however, a noncitizen must satisfy specific criteria, including disclosure in all relevant applications and/or interviews with U.S. government representatives and agents, the nature and circumstances of any material support provided and any other activity or association falling within the scope of section 212(a)(3)(B) of the Act, as well as all contact with a terrorist organization and its members. *Id.*

The Director determined that the Applicant did not establish she qualified for the above exemption because she had not been forthcoming about her activities in El Salvador, which pointed to her inadmissibility on terrorist-related grounds. The Applicant has not overcome this determination on appeal. First, the Applicant did not disclose her residence in El Salvador until only recently when she applied for TPS re-registration, years after USCIS granted her TPS. Moreover, the Applicant provided inconsistent information about when and how long she resided in El Salvador; while she claimed on her TPS re-registration Form I-821 that she lived in El Salvador from 1969 through 1986, in asylum

[6] *See* Canada: Immigration and Refugee Board of Canada, *The BPR-FPL in El Salvador, 1 June 1989*, SLV1124, available at: https://www.refworld.org/docid/3ae6abd924.html [accessed 19 September 2022]

proceedings she claimed to have resided in El Salvador until April 1994. In addition, although the Applicant indicated that she returned to Honduras in 1989 and 1991 to give birth to her children, the record shows that on the asylum application she claimed that both her children were born in El Salvador. The Applicant also did not fully explain the nature, circumstances, and the extent of her contacts with the guerillas, including how much food she provided them and on how many occasions. As the Applicant does not submit additional information on appeal sufficient to resolve those issues, we agree with the Director that at this time she has not established she meets eligibility criteria for the exemption to the material support bar.

III. CONCLUSION

The Applicant has not established that she is not subject to the terrorist related ground of inadmissibility identified by the Director, and she has not provided sufficient information necessary to determine whether she may qualify for an exemption. Consequently, the Applicant has not met her burden of proof to show that she remains eligible for TPS, and her TPS remains withdrawn.

ORDER: The appeal is dismissed.