

The claimant, a Liberian national, established that pursuant to USCIS notices issued in 2020 and 2021, she was legally authorized to work in the United States during her benefit year. Therefore, she was available for work under G.L. c. 151A, § 24(b).

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: 0046 2878 63

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to deny unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for unemployment benefits with an effective date of June 14, 2020. On September 25, 2020, the DUA issued a Notice of Disqualification, providing that the claimant was not entitled to benefits. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on March 6, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant did not establish that she was legally authorized to work in the United States and, thus, was not entitled to benefits under G.L. c. 151A, § 24(b). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to obtain additional evidence pertaining to the claimant's authorization to work. Following the claimant's failure to appear at the remand hearing for cause, we remanded the case a second time. The claimant participated in the second remand hearing. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue on appeal is whether the review examiner's decision, which concluded that the claimant did not establish she was legally available for work under G.L. c. 151A, § 24(b), is supported by substantial and credible evidence and is free from error of law, where the claimant did not have a current employment authorization document during her benefit year, but the totality of the documentary evidence in the record after remand shows that the claimant is authorized to work in the United States.

Findings of Fact

The review examiner's consolidated findings of fact are set forth below in their entirety:

1. On June 18, 2020, the claimant filed her claim for benefits with the Department of Unemployment Assistance (DUA) with an effective begin date of June 14, 2020, and an effective end date of June 12, 2021.
2. On September 25, 2020, the DUA sent a Notice of Disqualification to the claimant stating she had not established that she was legally permitted to work in the United States, therefore, she did not meet the requirements of the Law and was not entitled to benefits beginning June 14, 2020, and for an indefinite period of time thereafter, until she is legally permitted to work in the United States.
3. The claimant was born in the Republic of Liberia on July 16, 1977. (Exhibit 8)
4. The claimant has continuously resided in the United States since October 1, 2002.
5. The claimant has a Social Security Card (Valid for Work Only with INS Authorization) Number [XXX-XX-XXXX]. (Exhibits 9 and 10)
6. On December 20, 2005, the claimant was sent a notice her Application for Temporary Protected Status (TPS) was approved and valid beginning December 20, 2005, through October 1, 2006. (Remand Exhibit 10)
7. On February 29, 2008, the claimant was sent a notice her Application for Temporary Protected Status (TPS) was approved and valid beginning February 29, 2008, through March 31, 2009. (Remand Exhibit 11)
8. The claimant has an EMPLOYMENT AUTHORIZATION CARD valid beginning December 20, 2005, and an expiration date of October 1, 2006. (Remand Exhibit 9)
9. The claimant has an EMPLOYMENT AUTHORIZATION CARD valid beginning December 21, 2006, and an expiration date of September 30, 2007. (Remand Exhibit 12)
10. The claimant has an EMPLOYMENT AUTHORIZATION CARD ((FORM I-766 Rev. (02-2009)) valid beginning September 17, 2009, and an expiration date of March 31, 2010. (Exhibits 7 and 14)
11. The claimant has an EMPLOYMENT AUTHORIZATION CARD valid beginning May 20, 2010, and an expiration date of September 30, 2011. (Remand Exhibit 9)
12. In October 2020, the claimant submitted an I-485 (Application to Register Permanent Residence or Adjust Status) Application.

13. In October 2020, the claimant submitted an I-765 (Application for Employment Authorization) application.
14. The claimant, a Liberian, had Deferred Enforced Departure (DED) until January 10, 2021. (Exhibits 5 and 11)
15. Appeal Notes in UI Online state [that] the SAVE Unit, on March 4, 2021, found the claimant has Deferred Enforced Departure (DED) until June 30, 2022, pending I-485 (Application to Register Permanent Residence or Adjust Status) and I-765 (Application for Employment Authorization) applications.
16. On April 26, 2021, the claimant received an I-693 Deficiency Notice from the US Citizen and Immigration Services in relation to her I-485 Application. (Remand Exhibit 18)
17. In or about June 2021, the claimant was sent a notice to attend a medical examination in relation to her I-485 Application.
18. On June 12, 2021, the claimant was sent an ASC (Application Support Center) Notice to attend an appointment on July 1, 2021, for biometrics collection in relation to her I-485 Application. (Remand Exhibit 13)
19. On November 10, 2021, the claimant received a response from the Immigration Services Officer in relation to her I-765 (Application for Employment Authorization) application. (Remand Exhibit 15 - 2 pages)
20. On November 17, 2021, the claimant secured a USICS Account Home Page STATUS report in relation to her I-765 (Application for Employment Authorization) application. (Remand Exhibit 16)
21. On March 14, 2012, the claimant's pocketbook was stolen.
22. The claimant's Liberian Passport and I-94 Arrival/Departure Record were in her pocketbook.
23. The claimant reported the theft to the police.
24. The claimant has applied for a new Liberian Passport and was interviewed in January, 2021.
25. The claimant does not currently [possess] an I-94 Arrival/Departure Record card.
26. The claimant asserted she held Temporary Protected Status (TPS) on September 30, 2007.

27. The claimant did not present documentation substantiating Temporary Protected Status (TPS) was approved and valid on September 30, 2007.

Ruling of the Board

In accordance with our statutory obligation, we review the record and the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's original conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact except as follows. We reject the portion of Consolidated Finding # 7, which states that the claimant was granted Temporary Protected Status (TPS) on February 29, 2008, as Remand Exhibit 11, which the review examiner relied on to make this finding, is an I-797 Notice of Action form pertaining to the claimant's Application for Employment Authorization, and this document states that the claimant has been granted employment authorization, and not TPS, between February 29, 2008, and March 31, 2009.¹ We also reject Consolidated Finding # 27, which states that the claimant did not present documentation substantiating that she held TPS on September 30, 2007, as the documentation in the record referenced below establishes that the claimant held TPS on this date. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we conclude that the totality of the evidence in the record establishes that the claimant was authorized to work in the United States during her benefit year.

The review examiner initially denied the claimant benefits pursuant to G.L. c. 151A, § 24(b), which provides, in pertinent part, as follows:

[An individual, in order to be eligible for benefits under this chapter, shall] . . . (b)
Be capable of, available, and actively seeking work in his usual occupation or any
other occupation for which he is reasonably fitted. . . .

As a state agency administering the unemployment insurance programs, we must also abide by U.S. Department of Labor (DOL) regulations governing eligibility for unemployment insurance. These regulations require that a non-citizen must be legally authorized to work by the appropriate U.S. agency in order to be considered "available for work." Specifically, 20 C.F.R. § 604.5 — Application — availability for work, provides, in relevant part, as follows:

(f) *Alien status.* To be considered available for work in the United States for a week, the alien must be legally authorized to work that week in the United States by the appropriate agency of the United States government. In determining whether an alien is legally authorized to work in the United States, the State must follow the requirements of section 1137(d) of the SSA (42 U.S.C. 1320b-7(d)), which relate to verification of and determination of an alien's status.

Thus, in order to find the claimant available for work under G.L. c. 151A, § 24(b), the claimant must show that, during her benefit year, she was legally authorized to work by the appropriate U.S.

¹ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. See Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

agency, currently the U.S. Department of Homeland Security (DHS) U.S. Citizenship and Immigration Services (USCIS).

The review examiner originally concluded that the claimant did not have authorization to work in the United States during the benefit year of her claim, the period of June 14, 2020, through June 12, 2021. *See* Consolidated Finding # 1. The claimant's failure to present an employment authorization document (EAD) that was valid during the claimant's benefit year was the basis of the review examiner's conclusion. This, however, fails to take into consideration the fact that employment authorization may exist, even when a claimant is not in possession of a current EAD. We remanded the case to obtain the additional evidence that we deemed necessary in order to properly determine the claimant's circumstances and eligibility for benefits.

Because the claimant's most recent EAD at the time she filed her 2020 claim expired on September 30, 2011, we consider the claimant's immigration status during the benefit year of her claim, and whether that status granted her legal authorization to work. The record before us supports the conclusion that, during her benefit year, the claimant was authorized to work.

On February 16, 2021, USCIS issued a notice (February, 2021, notice) providing for continued work authorization for eligible Liberian Nationals through June 30, 2022. To be eligible, the individual must have continuously resided in the United States since October 1, 2002, held TPS status on September 30, 2007, and was covered under Deferred Enforced Departure (DED) as of January 10, 2021.² The consolidated findings combined with the exhibits in the record show that the claimant meets these conditions. The review examiner found that the claimant has continuously resided in the United States since October 1, 2002, and she was covered under DED for Liberians on January 10, 2021. *See* Consolidated Findings ## 4 and 14. Furthermore, the review examiner's finding that the claimant did not present documentation showing that she held TPS on September 30, 2007, is not supported by the record. *See* Consolidated Finding # 27. While we agree that the claimant has not presented a document explicitly stating that she held TPS on September 30, 2007, the documentation she has presented coupled with a review of prior government pronouncements, establishes that she in fact held TPS on September 30, 2007.

On September 20, 2006, USCIS issued a notice pertaining to the termination of TPS for Liberian nationals effective on October 1, 2007 (September, 2006, notice). That notice stated that new EAD's with an expiration date of September 30, 2007, would be issued to eligible TPS beneficiaries who timely re-registered for TPS benefits and applied for an EAD.³ Because the claimant was previously approved for TPS, and she was subsequently issued an EAD with an expiration date of September 30, 2007, we can reasonably infer that she held TPS status on September 30, 2007. *See* Consolidated Finding # 9. This is confirmed by Remand Exhibit 12, which shows that the claimant's EAD expiring on September 30, 2007, has a category "A12," which is a classification that is printed on EAD's issued to TPS beneficiaries.

² Reinstatement of Deferred Enforced Departure and Continuation of Employment Authorization and Automatic Extension of Existing Employment Authorization Documents for Eligible Liberians, 86 Fed. Reg. 9531 (Feb. 16, 2021).

³ Termination of the Designation of Liberia for Temporary Protected Status; Automatic Extension of Employment Authorization Documentation for Liberia TPS Beneficiaries, 71 Fed. Reg. 55000 (Sept. 20, 2006).

Lastly, prior to the issuance of the February, 2021, notice, the USCIS issued a notice on April 7, 2020 (April, 2020 notice), which extended DED and employment authorization for eligible Liberian nationals from March 31, 2020, through January 10, 2021.⁴ Because the consolidated findings show that the claimant was covered under DED on January 10, 2021, we can infer that she also had employment authorization during the period covered by the April, 2020 notice.

In light of the above government notices of extensions to the claimant's DED status and employment authorization in 2020 and 2021, and the multiple prior EAD's issued to her, we are satisfied that the claimant has established authorization to work in the United States during the benefit year of her 2020 claim, the period of June 14, 2020, through June 12, 2021.

We, therefore, conclude as a matter of law that the claimant has satisfied the availability requirement of G.L. c. 151A, § 24(b).

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week beginning June 14, 2020, and for subsequent weeks, if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 18, 2022



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS
STATE DISTRICT COURT
(See Section 42, Chapter 151A, General Laws Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:
www.mass.gov/courts/court-info/courthouses

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

⁴ Continuation of Employment Authorization and Automatic Extension of Existing Employment Authorization Documents for Eligible Liberians During the Period of Extended Wind-Down of Deferred Enforced Departure, 85 Fed. Reg. 19496 (Apr. 7, 2020).

SVL/rh