



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT  
BOARD OF REVIEW

Charles F. Hurley Building • 19 Staniford Street • Boston, MA 02114  
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## BOARD OF REVIEW DECISION

BR-115462 (Jan. 14, 2011) -- Although the claimant, a Liberian national, did not have a formal Employment Authorization Document during the base period, the combination of automatic government extensions of her work authorization documents and formal applications to the USCIS satisfied a majority of the Board that she was permanently residing under color of law (PRUCOL). She may not be disqualified under G.L. c. 151A, § 25(h).

### Introduction and Procedural History of this Appeal

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

The claimant separated from her employer on October 23, 2009. She filed a claim for unemployment benefits with the DUA on November 5, 2009, and was originally approved. However, on March 31, 2010, the DUA redetermined that the claimant was ineligible for benefits and was overpaid in the amount of \$7,845.00 for benefits paid during the fifteen weeks ending November 4, 2009 through February 20, 2010. The claimant appealed to the DUA hearings department. Following a hearing on the merits, which the claimant attended, the review examiner affirmed the agency's disqualification and determination of overpayment of benefits in a decision rendered on August 16, 2010.

Benefits were denied after the review examiner determined that the claimant was not authorized to work during the base period, as required under G.L. c. 151A, § 25(h). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue on appeal is whether the claimant, an alien who has lived and worked in the United States for 20 years, but whose formal authorization to work had concededly lapsed during her base period, should nonetheless be deemed to have had such authorization, because she previously had been so authorized, was lawfully present and permanently residing in the United States at all times during her base period, and subsequently obtained a renewed work authorization card from the USCIS.

### Findings of Fact

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

1. The claimant filed an unemployment claim on 11/5/2009 with an effective date of the week ending 11/1/2009. The claimant indicated she performed services for one employer within the past fifteen months. The claimant was most recently separated from her employer on 10/23/2009.
2. The claimant's unemployment claim was established with base period wages from 10/1/2008 through 9/30/2009.
3. After filing her unemployment claim, the DUA sent the claimant a Notice of Claim Discrepancy informing her to submit documentation to verify that she was legally authorized to work in the United States because she is a non-citizen.
4. In 1990, the claimant arrived to the United States from the Republic of Liberia. Due to a civil war within Liberia, the United States government provided the claimant and other Liberians with Temporary Protected Status allowed them to live in the United States. Such status expired on 3/31/2010.
5. While in the United States, the claimant applied for an Employment Authorization card which was valid from 10/5/2003 through 10/6/2004. This was the last Employment Authorization card the claimant obtained until June of 2010.
6. The claimant secured full-time employment with her previous Employment Authorization card and as a result did not re-new her Employment Authorization after expiration on 10/6/2004 because she was already employed.
7. The claimant continued to remain in the United States under Temporary Protected Status while working full-time.

8. The claimant does not have any documentation indicating she was legally able to work in the United States during the base period of her claim. The claimant has an internet article showing that Liberians had protected status in the United States until 3/31/2010.
9. The claimant did obtain a new Employment Authorization card in June 2010. Such authorization indicates that the card is valid from 6/25/2010 and expires on 6/24/2011.
10. On 3/31/2010, a Notice of Redetermination and Overpayment was mailed to the claimant informing her that she was subject to disqualification under Section 25(h) of the Law beginning the week ending 11/7/2009 and for an indefinite number of weeks thereafter. The notice also informed the claimant that she was overpaid benefits in the amount of \$7,845.00 for the 15 weeks ending 11/4/2009 through 2/20/2010.
11. It was determined by the local office that the overpayment was due to an error without fraudulent intent on the part of the claimant.

#### Ruling of the Board

The Board adopts the review examiner's findings of fact. In so doing, we deem them to be supported by substantial and credible evidence. However, we reach our own conclusions of law, as are discussed below.

G.L. c. 151A, § 25, provides, in pertinent part, as follows:

No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for ... (h) Any period ... on the basis if services performed by an alien, unless such alien was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed....

There is no dispute that the claimant, as a Liberian national, was originally lawfully admitted to the United States as an alien under Temporary Protected Status (TPS). Findings # 5 and # 9 reflect that the claimant had Employment Authorization Documents for the periods October 5, 2003 through October 6, 2004 (2003 Employment Authorization Document) and June 25, 2010 through June 24, 2011 (2010 Employment Authorization Document). The issue before us is the claimant's alien status during the base period of the claim, a period from October 1, 2008 through September 30, 2009.

The DUA review examiner concluded that the claimant was not authorized to work during the base period because she failed to show documentation that she was formally authorized to work. Nonetheless, even if the claimant did not have a formal Employment Authorization Document during the base period, the claimant was permanently residing in the United States under color of law (PRUCOL) and is, therefore, not disqualified from receiving benefits, under G.L. c. 151A, § 25(h).

The Supreme Judicial Court explained that an alien is in PRUCOL if the circumstances of the alien's presence suggest it is not temporary and, during the relevant time period, the United States Citizenship and Immigration Services (USCIS) has been aware of the alien's continued residence, could have deported the alien, but chose not to deport. Cruz v. Commissioner of Public Welfare, 395 Mass. 107, 115 (1985). These circumstances lead to the inference that USCIS has acquiesced in the alien's continued presence in the country. Id.

Finding # 4 indicates that the claimant has resided in the United States since entering from Liberia in 1990. Having resided in the United States since 1990, the claimant's presence in the United States is not temporary.

During the claimant's base period, it is apparent that USCIS was aware of claimant's continued residence in the country and could have proceeded to deport the claimant, yet no actions have been taken to that end. We can glean the government's awareness of the claimant's continued residence in the country by the fact that the claimant entered the country under Temporary Protected Status and by the prior applications that the claimant filed with USCIS for Employment Authorization Documents and Adjustment of Status.

Exhibit # 2 shows that the claimant was granted the 2003 Employment Authorization Document under a category "A12" designation for Temporary Protected Statuses.<sup>1</sup> Although the findings make no note of it, it is a matter of public record that qualifying Liberian nationals have had their temporary protected status extended multiple times, and only some of these extensions allowed the government to issue new Employment Authorization Documents. The claimant's Temporary Protected Status was extended through government pronouncements on her expired 2003 Employment Authorization Document through at least April 1, 2007.<sup>2</sup> Although not noted specifically in the findings, Exhibit # 13 shows that the 2010 Employment Authorization Document was filed and granted under category "C09," meaning that the claimant had previously filed for Adjustment of Status with USCIS. This combination of automatic government extensions of Employment Authorization Documents and formal applications to USCIS satisfies us that USCIS was aware of and acquiesced in the presence of this Liberian national.

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<sup>1</sup> Exhibit #2, while not explicitly incorporated into the review examiner's findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is thus properly referred to in our decision today. See Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Director, Department of Employment and Training, 64 Mass. App. Ct. 370 (2005).

<sup>2</sup> Termination of the Designation of Liberia for Temporary Protected Status; Automatic Extension of Employment Authorization Documentation for Liberia TPS Beneficiaries, Fed. Reg. 71,182 (Sept. 20, 2006).

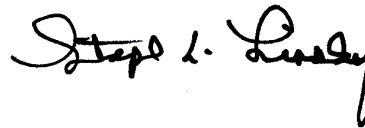
We, therefore, conclude as a matter of law that the claimant has satisfied the eligibility requirement of G.L. c. 151A, § 25(h), as an alien who was permanently residing under color of law while performing services during the base period.

The review examiner's decision is reversed. The claimant is entitled to receive benefits for the week ending November 7, 2009 and for subsequent weeks if otherwise eligible. The DUA should determine the claimant's availability for work, under G.L. c. 151A, § 24(b), during the period between November 7, 2009 and the issuance of her Employment Authorization Card on June 25, 2010.

**BOSTON, MASSACHUSETTS**  
**DATE OF MAILING - January 14, 2011**



John A. King, Esq.  
Chairman



Stephen M. Linksy, Esq.  
Member

Member Sandor J. Zapolin declines to sign the majority opinion.

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

**LAST DAY TO FILE AN APPEAL IN COURT – February 14, 2011**