U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUN 0 6 2013 Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Applicant:

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254a

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a citizen of Haiti who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to establish he was eligible for late registration.

On appeal, the applicant requests that his application be reconsidered as he has been residing in the United States since December 2009. The applicant states that he departed the United States because one of his children was severely ill.

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 of a 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.

On January 21, 2010, the Secretary designated Haiti as a country eligible for TPS. This designation allowed nationals of Haiti who have continuously resided in the United States since January 12, 2010, and who have been continuously physically present in the United States since January 21, 2010, to apply for TPS. On May 19, 2011, the Secretary re-designated Haiti for TPS eligibility which became effective on July 23, 2011. This re-designation allowed nationals of Haiti who have continuously resided in the United States since January 12, 2011, and who have been continuously physically present in the United States since July 23, 2011, to apply for TPS. The initial registration period for the re-designation began on May 19, 2011, and ended on November 15, 2011. On October 1, 2012, the Secretary announced an extension of the TPS designation for Haiti until July 22, 2014, upon the applicant's re-registration during the requisite time period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he 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 burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by U.S. Citizenship and Immigration Services (USCIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The record reflects that the applicant filed his initial TPS application on November 13, 2012. Along with his TPS application, the applicant submitted a copy of the biographical page of his U.S. visa issued on December 29, 2008, which lists his nationality as a Bahamian. USCIS records reflect that the applicant was born on March 6, 1984 in the Bahamas. The applicant maintains a Bahamian passport and has been admitted into the United States as a non-immigrant visitor on April 10, 2009, December 26, 2009, January 27, 2012 and April 7, 2012. The applicant has departed the United States on April 13, 2009, January 3, 2010, January 30, 2012, and April 14, 2012.

On December 17, 2012, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, in response, asserted that he did not file a TPS application during the registration period as he departed the United States to the Bahamas in January 2010 because his daughter was gravely ill.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on February 20, 2013.

The applicant's statements throughout the application process have been considered. The applicant, however, has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application on this ground will be affirmed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Beyond the decision of the director, in the notice of December 17, 2012, the applicant was informed of his last entry of April 7, 2012 into the United States and was requested to submit evidence establishing his continuous residence in the United States since January 12, 2011 and his continuous physical presence in the United States since July 23, 2011 to the date of filing.

The applicant, in response, asserted that upon his arrival in January 2010, he resided with his brother. The applicant indicated that he did not have any bills under his name and he did obtain employment because he did not have any legal documentation. The applicant submitted an affidavit from his brother, indicating that the applicant has been residing in his house, "since December 2009 and left the United States for a short time due to family issue."

The applicant departed the United States on January 3, 2010 and did not return until January 27, 2012. Therefore, he cannot meet the criteria for continuous residence in the United States since January 12, 2011 and continuous physical presence in the United States since July 23, 2011 as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the TPS application must be denied on these grounds as well.

Finally, the issue of the applicant's nationality will be addressed.

In the notice of December 17, 2012, the applicant was also requested to submit copies of all his passports showing entries and departures; records establishing citizenship of any other country than Haiti, and visas, residence cards or other immigration documents from any country other than the United States where he had resided. The applicant, in response, only provided a copy of his mother's Haitian birth certificate. The applicant asserted, "[m]y mother was Haitian and I was

born in the Bahamas way after the independence of Bahamas, therefore they consider me as Haitian."

The applicant's statement is not persuasive as he does not provide any credible evidence such as his passport from a country other than the Bahamas or a Certificate of Identity issued by the Bahamian Minister of Foreign Affairs[1] to support his assertion. The applicant also asserted that in the last three years he has resided in Haiti and the Bahamas. The applicant, however, has not provided any evidence to support a claim of residency in Haiti. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The United States Court of Appeals, in *Chee Kin Jang v. Reno*, 113 F. 3d 1074 (9th Cir. 1997), found that the Service reasonably interpreted the term "PRC national" in CSPA (Chinese Student Protection Act) to exclude Chinese dual nationals who did not declare citizenship of PRC (People's Republic of China) when they entered the United States, and that the Service's different treatment of PRC dual nationals, depending on whether they entered under a PRC passport or a passport of different country, was reasonable. The Court states that an alien is bound by the nationality claimed or established at the time of entry for the duration of his or her stay in the United States. Thus, a dual national CSPA principal applicant must have claimed PRC nationality at the time of his or her last entry into the United States.

The Board of Immigration Appeals, in *Matter of Ognibene*, 18 I&N Dec. 425 (BIA 1983), held that under appropriate circumstances in a given proceeding of law, the operative nationality of a dual national may be determined by his conduct without affording him the opportunity to elect which of his nationalities he will exercise. The General Counsel, in GENCO OP. 84-22 (July 13, 1984), reinforced this concept and states, "In interpreting a law which turns on nationality, the individual's conduct with regard to a particular nation may be examined. An individual's conduct determines his 'operative nationality.' The 'operative nationality' is determined by allowing the individual to elect which nationality to exercise. The nationality claimed or established by the nonimmigrant alien when he entered the United States must be regarded as his sole nationality for the duration of his stay in the United States." (Emphasis in original).

The record is clear in establishing that the applicant elected to present himself as a citizen of the Bahamas at the time he entered the United States. The Bahamas is not a designated foreign state under Section 244 of the Act. The applicant, therefore, does not meet the eligibility requirements of being a national of a state designated under section 244(b) of the Act. Accordingly, as the applicant has not demonstrated that his "operative nationality" is that of a TPS-designated country, the TPS application must be denied on this basis as well.

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[1] Certificates of Identity are issued to individuals who were born in the Bahamas after July 10, 1973 to non-Bahamian parents. *See* http://www.bahamas.gov.bs/bahamasweb2/home.nsf/vContentW/MOFA--Passport+Services--Requiremetns+and+Supporting+D....

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.