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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

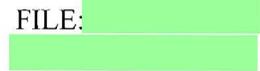


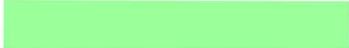
U.S. Citizenship
and Immigration
Services



DATE: **OCT 04 2013**

Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE: Applicant: 

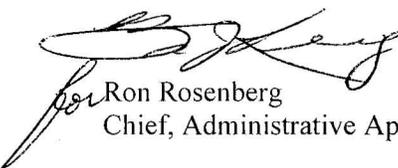
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254a

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,


for Ron Rosenberg
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 case is remanded for further action and consideration.

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 she was eligible for late registration.

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 she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2). 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 AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.

The record reflects that a Form I-589, Application for Asylum and Withholding of Removal, was filed on April 28, 2010. On October 18, 2010, the case was administratively closed due to the applicant's eligibility for TPS.

The applicant filed a TPS application ([REDACTED]) on July 6, 2010, during the registration period for the initial designation for Haiti.¹ On May 19, 2011, the applicant was requested to provide her own mailing address as addresses outside of the United States were not acceptable.² The record contains no evidence that the notice was returned by the U.S. Postal Service as undeliverable. On July 27, 2011, the Director, Nebraska Service Center, denied the application due to abandonment. No motion was filed from the denial of that application.³

It is noted for the record that although the applicant did not provide USCIS with a change of address, she did provide a Form EOIR-33/IC (Alien Change of Address Form/Immigration Court) to the Immigration Court on October 18, 2010, which listed an address within the United States.

On July 26, 2011, the applicant filed a second TPS application ([REDACTED]) and indicated that she was re-registering for TPS or renewal of temporary treatment benefits. The re-registration period is limited to individuals: 1) whose applications have been granted; 2) whose applications remain pending; or 3) who did not file during the initial registration period and meet any of the criteria under the late initial registration provisions described in 8 C.F.R. § 244.2(f)(2).

The director determined that the applicant was not eligible to file a re-registration application as her initial application had been denied on July 27, 2011. The director, however, considered the application as a first application to register for TPS as it was filed during the registration period of the re-designation for Haiti (May 19, 2011 through November 15, 2011). On September 11, 2012, the applicant was requested to submit evidence establishing her continuous residence and continuous physical presence in the United States during the requisite periods. The record contains no evidence that the notice was returned by the U.S. Postal Service as undeliverable. On March 8, 2013, the Director, California Service Center, denied the application due to abandonment and the notice was mailed to the applicant at her address of record. No motion was filed from the denial of that application.

The applicant filed the current TPS application on November 19, 2012, and it was considered under the late registration provisions described in 8 C.F.R. § 244.2(f)(2). On March 13, 2013, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, in response, only provided evidence relating to her residence and physical presence in the United States. The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on May 10, 2013.

The AAO disagrees with the director's finding as the applicant did meet the criteria for late registration under 8 C.F.R. § 244.2(f)(2)(ii). As previously noted, the applicant's asylum case was administratively closed. Administrative closing of a case does not result in a final order. It is

¹ January 21, 2010 through January 18, 2011

² The applicant provided a [REDACTED]

³ A denial due to abandonment may not be appealed, but an applicant may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

merely an administrative convenience which allows the removal of cases from the calendar in appropriate situations. *See Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996). Therefore, it is concluded that the applicant qualifies for late initial registration pursuant to 8 C.F.R. § 244.2(f)(2)(ii).

Accordingly, the director's conclusion that the applicant had failed to establish her eligibility for late registration will be withdrawn. The case will be remanded to the director for further adjudication of the TPS application. The director may request any additional evidence that she considers pertinent to assist with the determination of the applicant's eligibility for TPS. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above.