



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: DEC 24 2013

Office: CALIFORNIA SERVICE CENTER

FILE: [Redacted]

IN RE: Applicant: [Redacted]

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

ON BEHALF OF APPLICANT:

[Redacted]

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

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 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, counsel asserts that the applicant has been residing in the United States since July 8, 2011. Counsel states that the application was filed late because the applicant “was waiting to receive his Lawful Permanent Resident card through the granting of his father’s I-130 petition that was filed on his behalf.” Counsel states that the late filing of the TPS application was neither willing nor voluntary by the applicant as he was informed by multi-service agency people not to file the application within the initial registration period. Counsel also states that the applicant did not want to have two applications pending before U.S. Citizenship and Immigration Services. Counsel contends that the applicant still has an application pending as his father has appealed the denial of his immigrant visa application on behalf of the applicant.

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.

The term *continuously physically present*, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The term *continuously resided*, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

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).

As defined in 8 C.F.R. § 208.15, an alien is considered to be firmly resettled if, prior to arrival in the United States, he or she entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement unless he or she establishes:

(a) That his or her entry into that country was a necessary consequence of his or her flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that country; or

(b) That the conditions of his or her residence in that country were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled. In making his or her determination, the asylum officer or immigration judge shall consider the conditions under which other residents of the country live; the type of housing, whether permanent or temporary, made available to the refugee; the types and extent of employment available to the refugee; and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation that includes a right of entry or reentry, education, public relief, or naturalization, ordinarily available to others resident in the country.

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 record reflects that the applicant filed his initial TPS application on December 3, 2012. Along with his application, the applicant submitted copies of the biographical page of his Haitian passport and Form I-94, Arrival-Departure Record, which reflected he was admitted into the United States on May 1, 2011, as a nonimmigrant visitor.

On March 21, 2013, 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 apply for TPS during the initial registration period because he lacked the financial resources to do so. The applicant submitted an additional copy of his Form I-94 along with:

- The biographical page of his U.S. visa that was issued on August 4, 2010 in Nassau, Bahamas.

- An itinerary receipt from [REDACTED] dated May 1, 2011 for travel from Port Au Prince, Haiti to Fort Lauderdale, Florida.

The director determined that the evidence submitted did not establish eligibility for late registration and denied the application on July 1, 2013.

It is noted that the director, in her decision, noted that the Form I-94 indicated that the applicant was admitted into the United States on July 8, 2011. This was a harmless error by the director, which did not affect the outcome of her decision and has not prejudiced the applicant.

Counsel, on appeal, asserts that the applicant did not file a TPS application during the initial registration period because he was informed by multi-service agencies not to do so. However, as noted above, the applicant claims that he did not file the TPS application during the initial registration period due to lack of financial resources. The applicant made no claim to have been told by multi-service agencies not to file a TPS application during the initial registration period.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

If the applicant was not able to afford the filing fee, nothing prevented him from applying for a fee waiver as indicated on the instructions to the Form I-821, Application for Temporary Protected Status. Further, if the applicant was not sure of the filing procedures, he could have contacted USCIS National Customer Service for assistance. There is no provision to waive the registration requirement based on the applicant's assertion that he lacks knowledge of the immigration laws.

On appeal, counsel submits a copy of a Notice of Decision dated May 7, 2013, which denied a Form I-130, Petition for Alien Relative, filed on behalf of the applicant and a Form I-797C, Notice of Action, which indicated that a Form EOIR-29, Notice of Appeal, had been received on June 17, 2013.

A Form I-130, whether pending or approved, is not an application for change of status as provided in 8 C.F.R. 244.2(f)(2), and does not render the applicant eligible for late registration. The provisions for late registration were created in order to ensure that TPS benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations. The applicant has not submitted evidence that he has met any of those provisions outlined in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration 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 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d at 145.

Beyond the decision of the director, it is noted that as the applicant entered the United States on May 1, 2011, he cannot establish *continuous* residence in the United States since January 12, 2011. Therefore, the applicant has failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(c).

On March 21, 2013, the applicant was also requested to submit evidence to establish continuous physical presence in the United States since July 23, 2011; however, he failed to do so. Therefore, the applicant has failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b).

In the notice of March 21, 2013, the applicant was informed that the record established that he was residing in the Bahamas prior to entering the United States. The applicant was requested to provide his addresses for three years prior to his entry into the United States. The applicant was informed that if he had resided in another country other than Haiti prior to entering the United States, he was to provide an explanation of his immigration status in that country; whether he had lawful permission to be in that country; whether the permission was temporary or permanent; the reasons for being in that country; the reason for leaving; whether he was a refugee from another country; whether he had the same privileges provided to other persons who lived permanently in the country; and reasons why he did not consider himself to have been firmly resettled in the country other than Haiti before entering the United States.

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, however, neither addressed this finding nor provided the requested copy of his passport (current and expired), the requested information regarding his residence in the Bahamas prior to entering the United States, and the requested list of addresses for three years prior to entering the United States. The applicant is therefore ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

Consequently, the application must be denied on these three grounds as well.

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.