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



U.S. Citizenship  
and Immigration  
Services

[Redacted]

DATE: **FEB 07 2013**

Office: CALIFORNIA SERVICE CENTER

[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 in your case. All of the documents related to this matter have been returned to the California Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 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, "our office initially applied for [the applicant's] I-821 renewal within the allowed time period of 5/19/11-11/15/11." Counsel states that his office never received a receipt for the filing of the TPS application. Counsel asserts that his office and the applicant contacted U.S. Citizenship and Immigration Services on several occasions by phone and email to try to resolve this matter.

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 Form I-821, Application for Temporary Protected Status, [REDACTED] on March 19, 2010. On October 31, 2011, that application was denied due to abandonment and the notice was mailed to the applicant and to counsel at their addresses of record. No motion was filed from the denial of this application.<sup>1</sup>

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<sup>1</sup> 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).

The applicant filed the current TPS application on February 13, 2012.

On April 2, 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). Counsel, in response, asserted, in pertinent part:

Please note that our client file his I-821 Form properly, after many phone calls and inquiry's with USCIS we are unable to find his application. USCIS advise to re file a new application, a new filing fee was provided and new forms. [The applicant] has been filing his TPA [sic] Application since 2010 with this Law Firm and always been promptly to provide all documents require.

We are kindly requesting USCIS to accept his application.

The director, in his decision of August 8, 2012, noted the applicant previously filed a TPS application filed on March 19, 2010, and that it was subsequently denied for abandonment on October 13, 2011. The director also noted that a previous filed TPS application cannot serve as a basis to file the current application after the initial registration period has closed, and that no evidence has been submitted by the applicant to establish his eligibility to file the application subsequent to the initial registration period. Consequently, the director determined that the applicant had failed to establish he was eligible for late registration under 8 C.F.R. § 244.2(f)(2) or (g) and denied the application.

Counsel, on appeal, asserts that his office received a Request for Evidence for the applicant's Form I-765, Application for Employment Authorization. However, the denial notice indicates that a Request for Additional Notice was sent for the Form I-821, which counsel states that his office never received.

The Request for Evidence listed the receipt number for the Form I-765 instead of the Form I-821. This was a harmless error on behalf of the director, which did not affect the outcome of the decision and has not prejudiced the applicant.

Counsel's remaining statements on appeal have been considered. However, without corroborative evidence indicating that a TPS application was filed during the registration period of May 19, 2011 through November 15, 2011, counsel's assertions are without merit. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel has not provided any evidence of a cancelled check or a receipt of a money order that was payable USCIS during the registration period of May 19, 2011 through November 15, 2011.

Contrary to counsel's assertion, the record contains only one inquiry via email during the registration period regarding the status of a TPS application. The record indicates that a representative of the applicant contacted USCIS on October 25, 2011, in reference to the initial TPS application, and the representative was made aware of the denial of that application. The representative was advised to refer to the denial notice as it contained information regarding

eligibility to file an appeal or motion. No explanation has been provided why the applicant did not file a Form I-290B, Notice of Appeal or Motion, from the denial of the initial TPS application on October 13, 2011. There is no evidence that the notice of October 13, 2011 sent to the applicant and counsel were returned as undeliverable. Further, once it was apparent that USCIS had no record of a TPS application filed during the registration period for the re-designation of Haiti, it is unclear why the applicant failed to file the Form I-821 within the allotted time remaining.

The applicant 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 for TPS will be affirmed.

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.