



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: Office: CALIFORNIA SERVICE CENTER FILE:

JAN 30 2013

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. 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,

Ron M. Rosenberg
Acting Chief, Administrative Appeals Office

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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 that he was eligible for late registration.

On appeal, the applicant asserts "I did not receive the decision on the appeal that was filed on March 2011. I did not know the outcome of that appeal and also financially I was not ready to file the application on time nor did I know that I could ask for more time." The applicant claims that he did not intend to "miss the opportunity to be eligible for TPS" and requests that the director grant him TPS to remain in the United States.

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;

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- (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 announced an extension of the TPS initial designation for Haiti until January 22, 2013. On May 19, 2011, the Secretary also re-designated Haiti for TPS eligibility which became effective on July 23, 2011, and remains in effect until January 22, 2013, upon the applicant's re-registration during the requisite time period. 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.

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 on December 12, 2012, the applicant filed a TPS application ([REDACTED]). The director determined that the applicant is ineligible for TPS as an alien who had been convicted of two felonies in the United States and denied the application.¹ The applicant appealed the director's decision to the AAO and on April 27, 2011, the AAO rejected the appeal

¹ See Decision by *Director, California Service Center*, dated January 26, 2011.

as untimely.² On February 8, 2012, the applicant filed the current TPS application (

On March 6, 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, provided a statement dated May 2, 2012, stating that the reason he filed the current TPS late was because he was waiting for a decision on the appeal of his prior TPS application (). The applicant also submitted a copy of his son's birth certificate indicating that his son was born in the United States in June 2003, and copies of tax returns he has filed since 1992.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on June 15, 2012. On appeal, the applicant asserts that he filed the current application after the initial registration period because he did not know the outcome of his prior appeal to the AAO, and that he was not financially able to file a new application in a timely manner. The applicant claims that he did not intentionally miss the filing deadline for TPS.

A review of the record shows that the AAO's April 27, 2011 decision to reject the applicant's appeal was mailed to the applicant at his address of record, which is the same address the applicant listed on the current appeal. The record does not reflect that the applicant filed a change of address notice during the pendency of his initial TPS application and the current application. The record does not show that the decision mailed to the applicant was returned as undeliverable. There is no evidence demonstrating that the applicant did not receive the decision from the AAO.

The AAO notes that while the applicant may have believed that his previous appeal was still pending, he submitted no evidence to demonstrate that he would have been entitled to file a late application based on this erroneous belief. Also, the applicant submitted no evidence to demonstrate that he meets any of the criteria enumerated at 8 C.F.R. § 244.2(f) or (g) that would have permitted him to file the current TPS application after the initial registration period closed.

The applicant has failed to submit any evidence to establish that he 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.

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.

² Although the record shows that the AAO rejected the appeal as untimely, the appeal, even if timely, would have been dismissed as the applicant was found ineligible for TPS as an alien who committed one or more felonies in the United States.