



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE:

MAR 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:

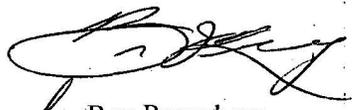
Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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 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 (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 states the following for his reasons for not filing a TPS application during the initial registration period:

I did not have any money to pay a lawyer to filed the application for me and unfortunately, a friend of mine refer me to an agent who said he will be able to help me and told me since my application for asylum was pending I should not have any problem for late filing.

The applicant requests that the late filing of his TPS application be reconsidered.

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;

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- (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 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 a Form I-589, Application for Asylum and for Withholding of Removal, on April 21, 2011. On June 13, 2011, a removal hearing was held and the applicant's Form I-589 was denied. No appeal was filed from the decision of the immigration judge. On June 29, 2011, a Form I-220B, Order of Supervision, was issued that appears to be still in effect.

The applicant attempted to file a TPS application on September 13, 2011; however, it was rejected because an incorrect or no fee was submitted. The applicant attempted to file another TPS application on October 19, 2011; however, it was rejected as the applicant did not submit the required documentation to support his fee waiver request. On October 31, 2011, the TPS application was returned to the applicant with instructions to provide the required documentation to support his fee waiver request.

The applicant filed the current TPS application with supporting documents for his fee waiver request on December 20, 2011.

On March 16, 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 copy of the immigration judge's order of June 13 2011 along with other documents relating to his immigration proceedings. The applicant stated that he filed his TPS application late because he had an asylum application pending during the initial registration period.

The director, in his decision, of July 20, 2012, noted that a TPS application may be filed after the initial registration period has been closed if the TPS application is filed within 60-days of the termination of an applicant's asylum or relief from removal. The director, citing the regulation at 8 C.F.R. 8 § 103.2(a)(7)(iii), advised the applicant that the rejected applications submitted on September 13, 2001 and October 19, 2011 cannot retain a filing date.¹ The director determined that the TPS application properly filed on December 20, 2011 was not within the 60-day filing period of the denial of the applicant's Form I-589. The director concluded that the applicant had failed to establish he was eligible for late registration as described in 8 C.F.R. § 244.2(f) or (g).

While a pending asylum application technically rendered the applicant-eligible for late registration, the regulation at 8 C.F.R. § 244.2(g) also requires a late registration application to be filed within a 60-day period immediately following the expiration or termination of conditions described in 8 C.F.R. § 244.2(f)(2). As noted above, the applicant's Form I-589 was denied on June 13, 2011. As there was no appeal pending from the decision of the immigration judge, the applicant's 60-day period for late registration expired on August 12, 2011. The applicant's first attempt to file a TPS application was on September 13 2011, 32 days after the end of his 60-day period for late registration. Consequently, the director's decision to deny the TPS application because the applicant had failed to establish he was eligible for late registration as described in 8 C.F.R. § 244.2(f) and (g) will be affirmed.

¹ The director mistakenly cited to the regulation at 8 C.F.R. § 103.2(a)(7)(i) effective January 1, 2011.

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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 at 145.

Beyond the decision of the director, the record reflects that a Form I-213, Record of Deportable/Inadmissible Alien, dated February 1, 2011, indicates that on January 31, 2011, the applicant entered the United States without inspection and was subsequently encountered by the U.S. Border Patrol near Hidalgo Texas. On his TPS application, the applicant listed his date of entry into the United States as January 31, 2011.

As the applicant entered the United States on January 31, 2011, he cannot establish continuous residence in the United States since January 12, 2011. Therefore, he has failed to establish that he has met the criteria described in 8 C.F.R. § 244.2 (c). Consequently, the TPS application must be denied on this basis 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.