

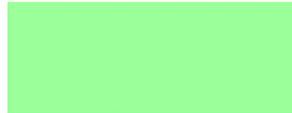


U.S. Citizenship
and Immigration
Services

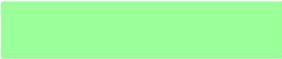
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DATE: **MAR 28 2013** Office: NEBRASKA SERVICE CENTER



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 Nebraska 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

DISCUSSION: The application was denied by the Director, Nebraska 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 asserts that he filed his TPS on October 18, 2011. The applicant states, in pertinent part:

After a review of my application by your office, you have sent it back to me because of some missing documentations [sic]. Unfortunately, I have never received it. Maybe it has been lost through the mailing process. From there, my mistake was that I waited too long to find out why I have not received anything from your office. I have called your office until July 2nd, 2012.

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 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 attempted to file his initial TPS application on October 18, 2011. The application, however, was rejected on October 25, 2011 as either the application was not signed or the correct/no fee was provided.

The applicant filed the current application on July 26, 2012. Along with his TPS application, the applicant submitted copies of the biographical page of his Haitian passport issued on April 27, 2012, in Haiti and of his Form I-94, Arrival-Departure Record, which reflected he was admitted into the United States on June 19, 2011, as a nonimmigrant visitor.

On August 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, submitted copies of the Form I-94 and the biographical page of his Haitian passport that were previously provided. The applicant also submitted copies of his patient card from Kings County Hospital Center in New York and the biographical pages of his U.S. visas issued on January 20, 2010 and June 6, 2011 valid through February 19, 2010 and December 16, 2011, respectively. The first visa, which was issued to escort an individual to the United States, has on its page entry stamps admitting the applicant into the United States on January 21, 2010, Dominican Republic on February 7, 2010, and Haiti on February 8, 2010. The second visa has on its page a departure stamp from Haiti and an entry stamp admitting the applicant into the United States on June 19, 2011.

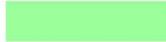
The director determined that the applicant had failed to establish he was eligible for late registration as described in 8 C.F.R. § 244.2(f)(2). The director also determined that the applicant had failed to file a TPS application within 60 days of the expiration of his nonimmigrant status pursuant to 8 C.F.R. § 244.2(g). Accordingly, the director denied the application on October 16, 2012.

The applicant's statements on appeal are noted. However, a TPS application submitted during the initial registration period that has been rejected will not retain a filing date. 8 C.F.R. § 103.2(a)(7)(iii). The applicant has not submitted any evidence to establish that he has met the criteria for late registration described in 8 C.F.R. §§ 244.2(f)(2) or (g). Consequently, the director's decision to deny the application for TPS 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 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d at 145.

Beyond the decision of the director, it is noted that on August 16, 2012, the applicant was also requested to submit evidence of continuous residence since January 12, 2011 and of continuous physical presence since July 23, 2011 in the United States. The applicant, however, has failed to provide evidence to establish continuous residence and continuous physical presence during the requisite periods.

USCIS records reflect that the applicant arrived in the United States on July 21, 2010, departed on February 7, 2010 and re-entered on June 19, 2011. As the applicant was not in the United States on



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January 12, 2011, he cannot meet the criteria for continuous residence since January 12, 2011 as described in 8 C.F.R. § 244.2(c). The applicant has also failed to submit sufficient evidence to establish continuous physical presence since July 23, 2011 through the date of filing the current TPS application as described in 8 C.F.R. § 244.2(b). Consequently, the TPS application must be denied on these 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.