



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE:

**MAR 28 2013**

Office: CALIFORNIA 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 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

**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 she was eligible for late registration.

On appeal, the applicant asserts, in pertinent part:

I have attached all documents to prove continued physical presence in the United States. No evidence to address the late filing was submitted, because, the application was sent and submitted to the USCIS office during the initial registration period.

Please reconsider your decision, the person who helped with the application made some mistakes and it was re-submitted improperly.

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 she 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 her initial TPS application on August 1, 2011; however, it was rejected on August 7, 2011, because the required Form I-765, Application for Employment Authorization, was not submitted. On August 15, 2011, the Form I-765 was submitted; however, it was rejected on September 7, 2011, as the financial instrument was returned by the bank or the credit card submitted as payment was not honored by the financial institution.

Five additional attempts (August 22, 2011, September 21, 2011, December 12, 2011, February 14, 2012 and March 13, 2012) were made before the applicant properly filed a completed TPS application on April 9, 2012.

On May 23, 2012, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing her nationality, identity and continuous residence in the United States since January 12, 2011. The applicant, in response, provided evidence to establish her nationality, identity and continuous residence during the requisite period. The applicant, however, failed to submit evidence to establish late registration eligibility.

The director, in his decision, informed the applicant that pursuant to 8 C.F.R. §103.2(a)(7)(iii) rejected applications cannot retain a filing date. Citing to the instructions made available to the public on the USCIS website that allows an applicant whose application was received before the registration deadline to re-file within 45 days after a fee waiver request has been denied, the director noted that USCIS records do not indicate that the six applications submitted before April 9, 2012, were the result of a fee waiver request. The director further noted that even if the applicant could prove that a fee waiver request had been filed before the November 15, 2011 registration deadline, the current application still would not be accepted as timely filed as it was filed after the 45-day period had expired. The director determined that the rejected applications could not serve as the basis for submitting the current application subsequent to the initial registration period.

The director indicated that the applicant's non-immigrant status had expired on May 26, 2011 and that the current application was not received within the 60 days of the expiration of her non-immigrant status pursuant to 8 C.F.R. § 244.2(g). The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on October 9, 2012.

The applicant's statements on appeal are noted. However, if the applicant was not sure of the filing procedures, she could have contacted USCIS National Customer Service for assistance.<sup>1</sup>

The applicant has not submitted any evidence to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). As previously mentioned, a TPS application filed during the initial registration period that has been rejected will not retain a filing date. 8 C.F.R.

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<sup>1</sup> The telephone number for USCIS National Customer Service was provided on the Form I-797C, Notice of Action, dated August 7, 2011, that rejected the initial TPS application.

§103.2(a)(7)(iii). 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.