



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: Office: CALIFORNIA SERVICE CENTER [Redacted]  
**MAR 29 2013**

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,

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 case will be remanded for further consideration and action.

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, counsel asserts that the director's decision is in error as "all fees and penalties had been paid in full prior to the denial USCIS's own paperwork links the invoice number to the applicant receipt number. USCIS knew or should have known that the filing fees and all penalties had been paid in full."

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 attempted to file a TPS application [REDACTED] on September 20, 2011; however, it was returned to the applicant as the check or financial instrument used to pay the filing fee was not honored by the bank or the financial institution.<sup>1</sup> It is noted that [REDACTED] who prepared the TPS application submitted the payment instrument. On September 30, 2011, a notice was sent to the applicant, which informed her that USCIS had stopped processing her application and that no further action would be taken on the

<sup>1</sup> The Form I-765, Application for Employment Authorization, was also rejected as the check or financial instrument used to pay the filing fee was returned by the bank or not honored by the financial institution

application until the filing and return check fees were paid in full. The applicant was granted 14 days to submit the payment in full.

In response to the notice issued on April 20, 2012, the applicant submitted a copy of [REDACTED] credit card statement dated November 6, 2011, from Citibank, which indicated that several payments were made on October 21, 2011 to [REDACTED]

The director, in denying the application, indicated, in pertinent part:

The credit card statement from [REDACTED] that was submitted as proof that USCIS received payment was issued to [REDACTED]. The applicant failed to submit evidence in form of canceled checks in showing that [REDACTED] made payment on her behalf or evidence that links the filing fee for her applications and the purchases shown on the submitted credit card statements.

The director indicated that on January 9, 2012, the applicant attempted to file another TPS application [REDACTED] however, it was rejected due to incorrect or no fee. The applicant re-filed the application which was received on February 21, 2012. The director, citing 8 C.F.R. § 103.2(a)(7)(iii), indicated that a rejected application cannot retain a filing date and therefore, the rejected application of November 3, 2011, could not be used as evidence of having filed an application for initial TPS registration prior to or on November 15, 2011. The director determined that the application received on February 21, 2012 was received more than three months after the initial TPS registration period had closed. The director concluded that the applicant had not established eligibility for late registration under 8 C.F.R. § 244.2(f)(2) and denied the application on August 15, 2012.

On appeal, counsel submits:

- Copies of invoices dated September 20, 2011, from [REDACTED]. The invoices addressed to [REDACTED] advised him that payment in full (filing fee and associated fee/charge) was due within 14 calendar days of the invoice date.
- Letters dated October 12, 2012, addressed to [REDACTED] from an official of the [REDACTED] in Burlington, Vermont, which indicate that its office received payment for the receipt numbers [REDACTED] and [REDACTED] in the amount of \$115.00 and \$410.00, respectively on October 21, 2011.

In the instant case, the applicant has provided sufficient credible evidence to support her claim that a payment had been made on her initial TPS application. Because the application was not rejected prior to the receipt of payment, the case will be remanded in order for the director to determine if the initial application should be accepted as timely filed.

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The director may request any additional evidence that he considers pertinent to assist with the determination of the applicant's eligibility for TPS. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

**ORDER:** The case is remanded to the director for further action consistent with the above and entry of a decision.