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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE: NOV 27 2013

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

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: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Acting Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further consideration and action.

The applicant is a citizen of Haiti who is applying for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254. He filed the current TPS application on November 26, 2012, and indicated that he was filing an initial application for TPS.

The director denied the application on April 24, 2013, after determining that the applicant was ineligible for late initial registration.

On appeal, the applicant requests consideration on humanitarian grounds.

The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>1</sup>

Filing an application for TPS during a designated re-registration period does not render all individuals eligible for the benefit sought. The re-registration period is limited to individuals: 1) whose applications have been granted; 2) whose applications remain pending; or 3) who did not file during the initial registration period and meet any of the criteria under the late initial registration provisions described in 8 C.F.R. § 244.2(f)(2).

The record reflects that on August 15, 2011, the applicant filed an initial TPS application, under receipt [REDACTED] that was denied on June 1, 2012. The record does not reflect an appeal of that decision. Therefore, at the time the current TPS application was filed, the applicant did not have a TPS application that was granted and did not have a TPS application that remained pending. Therefore, he is not eligible to re-register for TPS. Accordingly, the AAO will consider the current application as a late initial registration for TPS.

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 as designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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;

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<sup>1</sup>The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

- (c) Has continuously resided in the United States since such date as the Attorney General 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.

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 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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he or she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

The issue in this proceeding is whether the applicant is eligible for late initial registration for TPS.

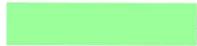
The record reflects that on April 11, 2011, the applicant filed a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-862, Notice to Appear, dated September 15, 2011, indicates that the applicant entered the United States without inspection on or about December 20, 2010. On October 31, 2011, the Form I-862 was served on the applicant, and the same day an immigration judge ordered the matter administratively closed. As noted above, the applicant filed an initial TPS application on August 15, 2011, that was denied on June 1, 2012, and there was no appeal of the denial decision. The applicant filed the current TPS application, receipt number WAC 13 902 28664, on November 26, 2012, and indicated that he was filing an initial application for TPS. On April 24, 2013, 2008, the director denied that application after determining that the applicant had failed to establish his eligibility for late initial registration. The director noted that the applicant filed his TPS application over sixty (60) days after his pending asylum application had been administratively closed, and therefore, he was not eligible for late registration on the basis of a pending asylum application.

Administrative closing of a case does not result in a final order. It is merely an administrative convenience which allows the removal of cases from the calendar in appropriate situations. *See Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996).

The record reflects that the applicant's removal proceeding is still pending as the immigration judge administratively closed the removal proceeding on October 31, 2011. Either party desiring further action could motion the Immigration Court to re-calendar the matter. Accordingly, the removal proceeding is still pending or subject to further review or appeal.<sup>2</sup> No final decision on the

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<sup>2</sup> The record reflects that pursuant to a January 3, 2013 motion to re-calendar, the matter has been scheduled for a hearing before an immigration judge on January 29, 2014. It is noted, however, the AAO does not base the determination that the applicant is eligible for late initial registration pursuant to 8 C.F.R. § 244.2(f)(2)(ii) on the re-calendar of the removal proceedings as re-calendar of the proceedings is not a necessary condition for the proceeding to be pending.



applicant's asylum application has been issued by an immigration judge. The applicant is, therefore, eligible for late initial registration under 8 C.F.R. § 244.2(f)(2)(ii). The director's finding will be withdrawn.

The case will be remanded to the director for further adjudication of the application. The director may request any additional evidence that she 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.

As always, the burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

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