



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **OCT 23 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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
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.

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 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 on February 3, 2005, the applicant entered the United States as a non-immigrant visitor and was admitted through August 2, 2005. A Form I-539, Application to Extend /Change Nonimmigrant Status, was filed on July 12, 2005, which was approved through July 25, 2006. The applicant maintained her nonimmigrant status as her subsequent Form I-539 applications were approved through January 25, 2010. On January 29, 2010, during the initial designation for Haiti, the applicant filed a Form I-539, which was approved through January 25, 2011.

The applicant filed her TPS application on November 13, 2012. At the time the TPS application was filed, the applicant was represented by counsel. In a letter, dated October 30, 2012, counsel indicated that the applicant did not file a TPS application during the initial registration period (January 21, 2010 through January 18, 2011) because her caretaker was informed by an

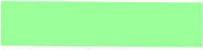
(January 21, 2010 through January 18, 2011) because her caretaker was informed by an immigration attorney, that the applicant was not eligible for TPS. Counsel also indicated that the caretaker was further misled as she was informed by USCIS that the applicant was not eligible for TPS. Counsel asserted that the caretaker is “alleging ineffective assistance of counsel and misadvise from immigration on behalf of [the applicant] which has resulted in this late filing.”

The director, in her decision, indicated that the applicant’s non-immigrant status had expired on January 25, 2011 and because a TPS application was not filed within the 60 days following the expiration of said status, said status could not grant her eligibility to file an application under the late initial provisions. 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 June 21, 2013.

On appeal, the applicant’s representative indicates that in 2010, she was informed by USCIS that the applicant “could not apply for TPS due to the fact that she was in valid status.” The representative indicates, “between the Jan 2011 closing & May 2011 re-designated period I was informed by an attorney & the USCIS that [the applicant] was ineligible for TPS at that time.” The representative asserts that the applicant has cerebral palsy and is completely dependent upon others. The representative requests that the application be reconsidered due to the misinformation she received from the attorney and USCIS.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel or the authorized representative with respect to the actions taken and what representations counsel or the representative did or did not make to the respondent in this regard (2) that the person whose integrity or competence is being impugned, be informed of the allegations leveled against him and be given an opportunity to respond, and, (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 9 I&N Dec. 637 (BIA 1988), *aff’d*, 857 F. 2d 10 (1st Cir. 1988). The record contains no evidence confirming that counsel has been notified of the incompetence claim, or evidence demonstrating that a complaint, based upon the allegations, has been filed with the appropriate disciplinary authorities. To the extent that the record does not include sufficient evidence to substantiate an ineffective assistance of counsel claim, the AAO will review the record applying standard statutory and regulatory eligibility requirements and burdens of proof.

The representative claims that between January 2011 and May 2011, she was informed by USCIS of the applicant’s ineligibility for TPS; however, she did not provide the date or any information to whom she spoke to. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Whatever may or may not have transpired between January 2011 and May 2011, the applicant nevertheless had the opportunity to file a TPS application during the registration period (May 19, 2011 through November 15, 2011) of the re-designation for Haiti. The applicant, however, failed to do so.



The applicant did not file her application during the initial registration period of the re-designation for Haiti or during the allotted 60-day late registration period described in 8 C.F.R. § 244.2(g). 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). 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.