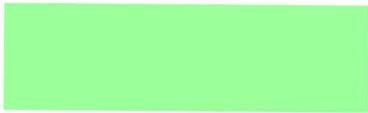




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: SEP 04 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.

On April 27, 2012, the director denied the application because the applicant failed to establish he was eligible for late registration.

On appeal, the applicant asserts:

The previous application was denied without notice received and i have been asked to file another application, time to do so and to reach to the office the time period was expired as a result i was denies; so that i want you to know that was'nt [sic] proscratinated [sic] it just was about understanding about USCIS laws please i request a re-review in my case because i'm among those who qualify for T P S program.

The applicant submits a copy of his wage and tax statement for 2011 and an additional copy of his Form I-94, Arrival-Departure Record. The applicant indicates at Part 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.¹ To date, however, no additional correspondence has been presented by the applicant. Therefore, the record must be considered complete.

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

¹ Every appeal submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. 8 C.F.R. § 103.2(a)(1). The Form I-290B instructs the applicant to submit a brief and additional evidence to the AAO within 30 days of filing the appeal.

- (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 filed his initial Form I-821, Application for Temporary Protected Status, (LIN1090380655) on May 21, 2010 under the first designation for Haiti. The Director, Nebraska Service Center denied that application on September 14, 2010 because the applicant failed to establish continuous residence since January 12, 2010 and continuous physical presence since February 21, 2010. On March 23, 2011, the AAO rejected the appeal as it was untimely filed (69 days after the decision of September 14, 2010 was issued).

On August 24, 2011, the applicant filed a Form I-765, Application for Employment Authorization, but failed to submit a Form I-821. On December 14, 2011, a notice was issued which advised the applicant that he was not eligible to file a Form I-765 as his initial TPS application had been denied. The applicant was advised that USCIS was accepting late initial filings for TPS if there was a good cause for filing after the end of the registration period.

The applicant filed the current TPS application on December 22, 2011, under the re-designation for Haiti. The applicant, in a letter, indicated that he did not file a TPS application during the initial registration period for the re-designation because "I was still under appeal" and only applied for employment authorization.

On March 26, 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, asserted that he was filing late because he had a Form I-765 that was pending. The applicant stated, "I read on USCIS if you already have a pending case, you don't have to re-file an I-821 (application for temporary protected status) they may keep your old tps pending then reprocess it." The applicant stated that the initial TPS application "was pending until March 23, 2011 and USCIS send [sic] me a letter to file for an appeal."

The director, in denying the current application, acknowledged that the Form I-765 had been filed during the initial registration period; however, said form did not allow the applicant to file for TPS after the initial registration period had expired as it was not an application for change of status, adjustment of status, asylum, voluntary departure or any relief from removal that was pending or subject to further review or appeal. The director refuted the applicant's assertions that he did not file a new TPS application due to the pendency of his initial TPS application and the Form I-765 filed on August 24, 2011. The director determined the record reflected that the TPS application had been denied on September 14, 2010; that at the time the Form I-765 was filed the appeal from the

denial of the initial TPS application had already been rejected by the AAO on March 23, 2011; and that the applicant was aware of these facts as he had provided a copy of the AAO's decision.

The director concluded, "[e]ven if the applicant truly believed that that his application for TPS remained pending, failure to file during the initial registration period based on this mistaken belief cannot form the basis for eligibility to file for Temporary Protected Status after the initial registration period."

The AAO is bound by the clear language of the statute and lacks the authority to change the statute. There is no provision to waive the late registration requirement based on the applicant's assertion that he lacks knowledge of the immigration laws. The applicant has not submitted any evidence to establish that he 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.