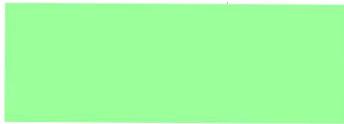




U.S. Citizenship  
and Immigration  
Services

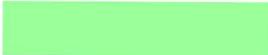
(b)(6)



DATE: **SEP 19 2013**

Office: CALIFORNIA SERVICE CENTER

FILE:   


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 (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,

  
for Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The re-registration 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 re-registration application because the applicant's initial TPS application had been denied on August 3, 2012, and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant asserts that he arrived in the United States on November 2, 2010, due to the conditions in his native country, Haiti. The applicant requests that his application be reconsidered and approved. The applicant submits affidavits from two affiants in an attempt to establish continuous residence and continuous physical presence in the United States.

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.

The term *continuously physically present*, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The term *continuously resided*, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

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 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 first issue to address is whether the applicant is eligible to file a re-registration application.

The record reflects that the applicant filed his initial TPS application on November 30, 2011, subsequent to the initial registration period. The director denied the initial TPS application after determining that the applicant had abandoned his application by failing to respond to a Request for Evidence (RFE) dated April 20, 2012. The RFE requested the applicant to provide evidence: 1) 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; 2) establishing his continuous residence in the United States since January 12, 2011; and 3) establishing his continuous physical presence in the United States since July 23, 2011. No motion was filed from the denial of that application.<sup>1</sup>

The applicant filed the current TPS application on December 3, 2012,

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).

At the time the current TPS application was filed, the applicant: 1) did not have a TPS application that was granted; 2) did not have a TPS application that remained pending; and 3) had not established that during the initial registration period, he had met one of the late initial filing provisions outlined in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the re-registration application will be affirmed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The second issue to address is whether the applicant, on appeal, has established eligibility for late registration.

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

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<sup>1</sup> A denial due to abandonment may not be appealed, but an applicant may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

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).

Along with the re-registration application, the applicant's former counsel provided a letter indicating that the applicant had applied for TPS on October 4, 2011, and that USCIS "should have received the applications well in advance of the November 15, 2011 filing deadline."

Counsel, however, did not provide any evidence to support this assertion. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). It is noted that the initial Form I-821 is dated October 4, 2011. A benefit request will be considered received by USCIS as of the actual date of receipt, not by the date of signing the application. 8 C.F.R. § 103.2(a)(7)(i).

In issuing the RFE, the director considered the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration. As previously noted the director determined that the applicant did not respond to the RFE and thereby failed to establish late registration eligibility.

Along with the re-registration application, the applicant, in an affidavit, indicated that he received the RFE late and that "I responded to the RFE on my own as soon as I received it." The record of proceedings and USCIS electronic database, however, do not indicate that a response to the RFE was received. The applicant has not provided any evidence to support his statement. 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)).

On appeal, the applicant neither addresses the finding of his ineligibility as a late registrant nor provides any evidence to establish his eligibility as a late registrant. The provisions for late registration detailed in 8 C.F.R. § 244.2(f)(2) were created in order to ensure that TPS benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations. The applicant has not submitted evidence that he has met one of those provisions outlined in 8 C.F.R. § 244.2(f)(2). Therefore, the applicant remains ineligible for TPS on this ground.

The third and fourth issues to address are whether the applicant, on appeal, has established continuous residence in the United States since January 12, 2011 and continuous physical presence in the United States since July 23, 2011.

In an attempt to establish continuous residence and continuous physical presence in the United States, the applicant submitted with the current and prior TPS applications and on appeal:

- A Form I-220B, Order of Supervision, issued on March 11, 2011, which indicates that the applicant reported to the field office in Miramar, Florida on April 5, 2011 and August 5, 2011.
- A Form I-797C, Notice of Action dated December 1, 2011, regarding the receipt of his initial TPS application.
- A notarized affidavit from [REDACTED] of North Miami Beach, Florida, who indicates that he has known the applicant since 1994 and attests to the applicant's entry into the United States on November 2, 2010. The affiant indicates that the applicant "was living at" [REDACTED], Miami, Florida
- A notarized affidavit from [REDACTED] of Miami, Florida, who indicates that she has known the applicant since his entry into the United States on November 2, 2010. The affiant attests to the applicant's moral character and states that she "eventually" she participates in social events with him.

The AAO does not view these affidavits as substantive to support a finding that the applicant has continuously resided in and has been continuous physically presence in the United States during the requisite periods.

The affidavit from [REDACTED] raises questions to its credibility as the affiant attested that the applicant was residing at [REDACTED] Miami, Florida since his entry on November 2, 2010. However, at the time, the applicant was placed under order of supervision on March 3, 2011, the applicant did not list this address as his place of residence. The Form I-220B specifically advised the applicant that he must "furnish written notice" to the USCIS office in Miramar, Florida, of any change of residence within 48 hours of change. The record of proceedings does not indicate that a change of address was reported.

Casting further doubt is the fact that the affidavits from the affiants do not provide detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite periods.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since January 12, 2011, and his continuous physical presence in the United States since July 23, 2011. The applicant has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Therefore, the applicant remains ineligible for TPS on these grounds.

The fifth issue to be addressed is whether the applicant is admissible to the United States.

Pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Except as provided in clause (iii), the Secretary may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Section 244(c)(2)(A)(ii) of the Act. If an alien is admissible on grounds which may be waived, he or she shall be advised of the procedures for applying for a waiver of grounds of inadmissibility on Form I-601, Application for Waiver of Grounds of Inadmissibility. 8 C.F.R. § 244.3(b)

The record reflects that on November 2, 2010, the applicant applied for admission into the United States by presenting a fraudulent Haitian passport and an altered U.S. visa. The applicant is, therefore, inadmissible under section 212(a)(6)(C)(i) of the Act.

As noted above, such ground of inadmissibility may be waived. However, as the applicant is ineligible for TPS based on the issues addressed above, there is no need, at this time, for the director to grant the applicant the opportunity to submit a Form I-601.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.