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

(b)(6)

U.S. Citizenship and Immigration Services

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,

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.

On appeal, the applicant asserts that she has not traveled outside of the United States since her entry. The applicant states that she filed her TPS "application late because of my financial situation I was unable to obtain the US Dept. of Homeland Security fee at that time, when sent it first time it was rejected I did not qualify for fee waiver."

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 record reflects that the applicant filed her initial TPS application on November 6, 2012.

On November 26, 2012, the applicant was requested to submit evidence establishing her: 1) identity; 2) eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2); 3) continuous residence in the United States since January 12, 2011; and 4) continuous physical presence in the United States since July 23, 2011. The applicant was informed that if she had a brief, casual, and innocent absence from the United States during this period, or a brief temporary trip abroad required by emergency or extenuating circumstances outside her control, she was to submit evidence to support the absence.

The applicant was advised that USCIS records reflect that she had arrived in the United States on January 20, 2011 and March 17, 2011 from her native country, Haiti, and that she had departed the United States on April 8, 2011.

The applicant, in response, asserted that she had not traveled outside the United States since her entry. As evidence, the applicant submitted:

- A Form I-94, Arrival-Departure Record, which indicated that the applicant was admitted into the United States as non-immigrant visitor on September 5, 2010.
- Medical documents dated October 6, 2010 from (Florida) and a photocopy of a Florida , and the applicant's discharge dated October 9, 2010.
- An undated invoice.
- A photocopy of her expired passport (March 5, 2008).
- A Florida Traffic Crash Report dated October 2, 2010.
- Medical documents dated October 6, 2010.
- Documentation dated February 1, 2011 from an attorney and of Fort Lauderdale, Florida, regarding a motor vehicle accident in which the applicant was involved.
- Money gram transaction receipts dated in December 30, 2011 and January 11, 2012.
- A letter dated December 12, 2012, from the program director of in Fort Lauderdale, Florida, who confirmed that the applicant was currently enrolled and had been attending an since October 22, 2012.

The director noted that the applicant was last admitted to the United States on March 17, 2011 as a non-immigrant and that the applicant had not submitted evidence to establish that her status had been extended. The director indicated that because the applicant's non-immigrant status had been cancelled on June 30, 2011, it could not be used as a criteria for late registration eligibility. The director determined that the applicant had failed to submit evidence establishing she was eligible for late registration and denied the application on March 8, 2013.

The applicant's assertion that she has not departed the United States since her last entry on September 5, 2010[1] is not supported by the record. USCIS records indicate that the applicant departed the United States on December 8, 2010, February 25, 2011, and April 8, 2011, and was admitted into the United States on January 20, 2011 and March 17, 2011 as a non-immigrant visitor. On June 30, 2011, the applicant arrived from the Bahamas and applied for admission as a non-immigrant visitor. On the same date, the applicant signed a Form I-275, Withdrawal of Application for Admission/Consular Notification. Because the applicant overstayed her September 5, 2010

[1] The applicant has previous arrivals and departures; however, as they occurred prior to the re-designation of Haiti for TPS eligibility, they are not relevant and will not be addressed in the current proceedings.

visit, she was given the opportunity to withdraw her application for admission into the United States. The U.S. visa was cancelled and the applicant was paroled into the United States until July 9, 2011 as she had to take her U.S. born child to the doctor. In addition, the applicant's Haitian passport contains admission stamps into: 1) the United States on September 5, 2010 and March 17, 2011; and 2) the Bahamas on February 25, 2011 and April 8, 2011.

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 she has met one of those provisions outlined in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS on this ground 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 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

As the applicant entered the United States on January 20, 2011, she cannot establish *continuous* residence in the United States since January 12, 2011. Further, the applicant's visit to the United States from September 5, 2010 to December 8, 2010 only serves to establish that the applicant was present in the United States for the duration of her visit; it does not establish *continuous* residence in the United States. Accordingly, the applicant has failed to establish that she has met the criteria for continuous residence described in 8 C.F.R. § 244.2 (c). The applicant has not submitted sufficient evidence to establish continuous physical presence in the United States since July 23, 2011. Therefore, she has failed to establish that she has met the criteria for continuous physical presence as described in 8 C.F.R. § 244.2(b). Consequently, the application must be denied on these grounds as well.

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.