

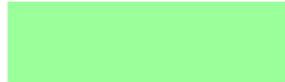


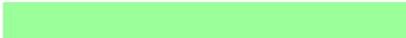
U.S. Citizenship  
and Immigration  
Services

(b)(6)



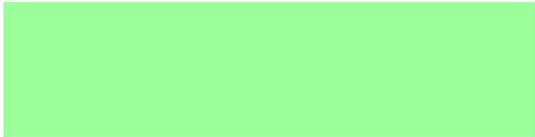
DATE: **APR 09 2014** Office: CALIFORNIA SERVICE CENTER



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:



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 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 applicant filed the current Form I-821, Application for Temporary Protected Status, on August 26, 2013, and indicated that he was re-registering for TPS or renewal of temporary treatment benefits.

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).

On December 11, 2013, the director determined that the applicant was filing a re-registration application and denied the application because the applicant's initial TPS application had been denied on February 2, 2011,<sup>1</sup> and the applicant was not eligible to apply for re-registration for TPS.

At the time the current TPS application was filed, the applicant did not have a TPS application that was granted or remained pending. Therefore, he was not eligible to re-register for TPS. 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 Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012) (noting that the AAO conducts appellate review on a *de novo* basis).

The director's decision, however, did not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-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;

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<sup>1</sup> The director denied the application as the applicant had been convicted on September 30, 1986 of sale/delivery of a controlled substance – cocaine.

- (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.

To qualify for late registration, the applicant must provide evidence that during the initial registration period (May 19, 2011 through November 15, 2011) 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).

On appeal, counsel submits court documentation indicating that on August 15, 2013, the applicant's felony drug conviction had been vacated on the merits as a result of underlying procedural or constitutional defects. The director, in the denial notice of February 2, 2011, indicated that the decision could not be appealed.<sup>2</sup> While the director noted the applicant's criminal record in her decision of December 11, 2013, it was not the basis for the denial of the current TPS application and is not before the AAO on appeal.

Along with the denial notice of the initial application, a Form I-862, Notice to Appear, was issued on February 2, 2011. On March 14, 2012, a removal hearing was held and the applicant was ordered removed from the United States. The applicant appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). On March 27, 2013, the BIA dismissed the applicant's appeal. No motion was filed from the decision of the BIA.

The applicant is ineligible for late registration as the current TPS application was not filed within the 60 days following the decision of the BIA. 8 C.F.R. § 244.2(g). The applicant has not submitted any evidence to establish that he has met any of the other criteria for late registration described in 8 C.F.R. § 244.2(f)(2) and (g). Therefore, the application also must be denied for this reason.

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 temporary protected status 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.

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<sup>2</sup> The director noted that due to the applicant's inadmissibility and/or removal, the applicant had a right to a *de novo* determination of TPS eligibility before the immigration judge in removal proceedings.