

(b)(6)

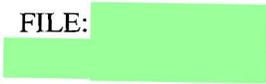


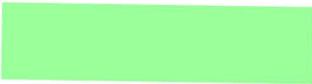
U.S. Citizenship  
and Immigration  
Services



DATE: **APR 25 2014**

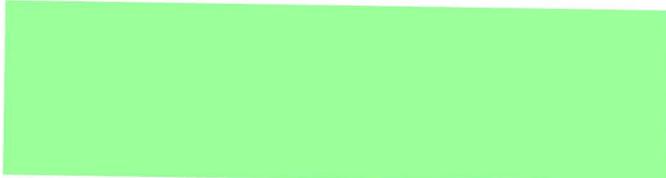
Office: CALIFORNIA SERVICE CENTER

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:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 February 4, 2014, the director denied the application because the applicant failed to establish she was eligible for late registration.

On appeal, citing 8 C.F.R. § 244.2(f)(1), counsel asserts that the current application should be considered timely as it “is a follow-up to [the applicant’s] prior timely filings” and that it “merely repeated her application, after the disqualification was removed.” In the alternative, counsel states that the applicant is eligible for late registration as she filed the current application within 60 days of the Board of Immigration Appeals decision vacating the frivolous asylum bar.

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 March 3, 2014, the Secretary announced an extension of the TPS designation for Haiti until January 22, 2016, 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 *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The record reflects that the applicant's Form I-589, Application for Asylum and Withholding of Removal, was filed on April 4, 2002. On May 22, 2003, a removal hearing was held and the applicant's applications for asylum, withholding of removal and convention against torture were denied, and she was ordered removed from the United States. The oral decision of the

immigration judge (IJ) indicates that the court found the applicant to have filed a frivolous application for asylum and, therefore, she was permanently barred from receiving any benefits under the Act. The applicant appealed the IJ's decision to the Board of Immigration Appeals (BIA). On March 9, 2004, the BIA affirmed without opinion, the IJ's decision. No motion was filed from the decision of the BIA.

The record reflects that the applicant filed her initial TPS application [REDACTED] on March 8, 2010. On April 29, 2010, the director denied the application because the applicant had previously filed a frivolous asylum application and, therefore, she was permanently ineligible for any benefit under section 244 of the Act. On September 7, 2010, the AAO rejected the appeal as it was untimely filed. The applicant filed a motion to reopen and motion to reconsider, which were dismissed by the director on January 4, 2011.<sup>1</sup>

The applicant filed another TPS application [REDACTED] on November 27, 2012. On March 15, 2013, the director denied that application because the applicant had previously filed a frivolous asylum application and, therefore, she was permanently ineligible for any benefit under section 244 of the Act. No appeal was filed from the denial of that application.

On August 8, 2013, the applicant filed a motion to reopen before the BIA. On October 28, 2013, upon sua sponte reconsideration, the BIA vacated the frivolousness finding.<sup>2</sup> The BIA vacated its decision of March 9, 2004 solely insofar as it affirms the finding that the applicant's asylum application was frivolous.

On November 21, 2013, the applicant filed the current application and indicated that it was her first application to register for TPS. Along with the application, the applicant's former counsel submitted a brief indicating that the applicant was eligible for late registration as her asylum application was still pending and subject to further review.

The regulation at 8 C.F.R. § 1003.2(c) provides that a motion to reopen before the BIA must be filed no later than 90 days after the date on the which the final administrative decision was rendered. In the instant case, there is no evidence of a motion filed before the BIA within the prescribed timeframe. As such, the director, in denying the current application, concluded that the applicant's asylum application was not subject to further review between March 9, 2004 (the BIA's decision) and August 8, 2013,<sup>3</sup> (at time the applicant's former attorney filed a motion before the BIA).

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. Having an application for TPS during the initial registration period does not render an alien eligible

---

<sup>1</sup> The director concluded that the underlying decision had not been overcome on motion.

<sup>2</sup> Citing *Matter of B-Y*, 25 I&N Dec. 236 (BIA 2010).

<sup>3</sup> The director inadvertently indicated August 9, 2013.

for late registration under 8 C.F.R. § 244.2(f)(2). The applicant has not submitted evidence that she has met any of the criteria for late registration 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 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.

The final issue to be addressed is the BIA's decision of October 2013.

The regulation at 8 C.F.R. § 1003.1(g) states, in pertinent part, that decisions of the BIA shall be binding on all officers and employees of the Department of Homeland Security or immigration judges in the administration of the immigration law of the United States. Because the BIA vacated the frivolousness finding, the applicant has overcome the sole basis for the denial of the initial TPS application. However, because, the appeal from the denial of the initial application was rejected by the AAO, there is no decision on the part of the AAO that may be reopened in that proceeding. Jurisdiction resides in the official who made the adverse decision in that proceeding.

**ORDER:** The appeal is dismissed.