



U.S. Citizenship  
and Immigration  
Services

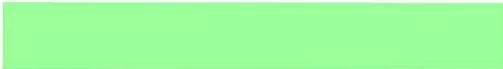
(b)(6)



DATE: **FEB 11 2014** Office: CALIFORNIA SERVICE CENTER

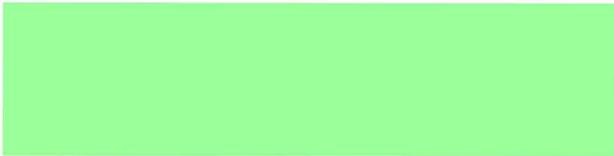


IN RE: Applicant:



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 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 he was eligible for late registration.

On appeal, counsel asserts that the applicant is eligible for late registration as his TPS application was filed within 60 days following the decision of the Board of Immigration Appeals. Counsel asserts that due to lack of financial resources the applicant did not have the ability to secure the accompanying filing fees at the time the initial application was submitted.

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 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).

An application received in a USCIS office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204, part 245 or part 245a of this chapter, shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted. 8 C.F.R. § 103.2(a)(7),

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 had filed a Form I-589, Application for Asylum and Withholding of Removal, on July 15, 1999. On November 17, 1999, a removal hearing was held and the applicant's applications for asylum, withholding of removal and convention against torture were denied, and he 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, he 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 December 6, 2001, the BIA summarily dismissed the appeal.

The applicant filed a TPS application ( ) during the registration period of the initial designation for Haiti (January 21, 2010 and ended January 18, 2011) on March 19, 2010. On June 22, 2010, the director denied that application because the applicant had previously filed a frivolous asylum application and therefore he was permanently ineligible for any benefit under section 244 of the Act. No appeal was filed from the denial of that application.

On October 17, 2011, the applicant filed a motion to reopen before the BIA. On December 28, 2011, the BIA reopened proceedings pursuant to 8 C.F.R. § 1003.2(a) and vacated the frivolousness finding.

During the re-designation for Haiti, the applicant's first attempt to file a TPS application ( ) occurred on February 29, 2012.<sup>1</sup> On March 8, 2012, the application was rejected as the check amount was either incorrect or had not been provided.

The applicant attempted to file another TPS application ( ) on April 2, 2012. On April 10, 2012, the TPS application was again rejected as the applicant did not submit sufficient documentation to support his fee waiver request. The application was returned to the applicant with instructions to support a fee waiver request.

The applicant's third and fourth attempts to file a TPS application ( ) and ( ) occurred on August 2, 2012 and September 21, 2012. The applications were rejected on August 9, 2012 and September 25, 2012, respectively as the check amount was either incorrect or had not been provided.

The applicant filed the current TPS application, which was received on October 9, 2012.

On November 1, 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). Counsel indicated, in pertinent part:

The initial TPS application was filed with USCIS within 60 days of the expiration of the deadline to file as set by USCIS, but it was filed with an application for fee waiver (I-912) which was denied by USCIS on more than once occasion.

---

<sup>1</sup> The director inadvertently indicated that an attempt to file the TPS application was made on March 3, 2012.

Applicant's inability to secure employment made it impossible for him to come up with the TPS package application fees.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on July 25, 2013.

Contrary to counsel's assertion the applicant did not submit a fee waiver request with his TPS application that was received on February 29, 2012. The Form I-912, Request for Fee Waiver, was submitted with the TPS application on April 2, 2012. The instructions to the Form I-821, Application for Temporary Protected Status, provide guidance to filing a fee waiver request. Further, if the applicant was not sure of the filing procedures, he could have contacted USCIS National Customer Service for assistance as indicated on the notice that was returned with the rejected TPS application.

While the motion before the BIA rendered the applicant eligible for late registration, USCIS regulation requires a late registration application to be filed within a 60-day period immediately following the expiration or termination of conditions that made the applicant eligible for late registration. 8 C.F.R. § 244.2(g). Assuming, arguendo, a TPS application with fee or with the required supporting documents to support a fee waiver request was received on February 29, 2012, the applicant would still not have been eligible for late registration as the TPS application was received 62 days after the BIA rendered its decision. Accordingly, the applicant has failed to establish that he has met the criteria for late registration. 8 C.F.R. § 244.2(g). Counsel's brief on appeal has been considered. The AAO, however, is bound by the clear language of the regulation and lacks the authority to change it. Consequently, the director's decision to deny the TPS application 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.