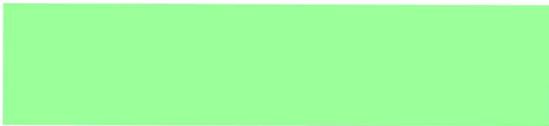




U.S. Citizenship
and Immigration
Services

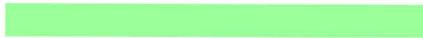
(b)(6)



DATE: **FEB 20 2014** Office: CALIFORNIA SERVICE CENTER

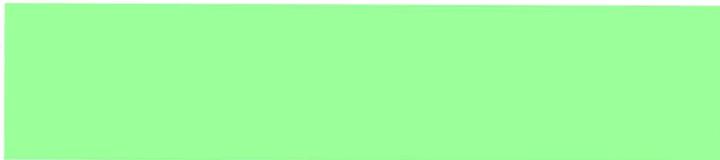


IN RE: Applicant:



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 she was eligible for late registration.

On appeal, counsel asserts that because the applicant was a minor at the time of the initial application, she “did not or could not initiate any action that would allow her to file a timely application for TPS. Her age in this case should be interpreted as an incapacity.”

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 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 on August 21, 2011, the applicant arrived at the [REDACTED] and applied for admission as a B-2 visitor. The applicant was referred to secondary inspection as she had voluntarily admitted that she was attending school in the United States without authorization from USCIS. USCIS records reflect that the applicant has been entering the United States as a B-2 visitor since February 4, 2010 and that she has departed within the authorization time for each visit. The applicant admitted that she has been residing in the United

States with her legal guardian (an aunt) and provided evidence establishing that the legal guardian had the authority to represent and/or act on her behalf. The applicant was placed in removal proceedings and issued a Form I-862, Notice to Appear. The applicant was paroled into the United States on August 21, 2011 for one year and was released into the custody of her legal guardian.

The record reflects that the applicant filed her initial TPS application on December 3, 2012.

On March 7, 2013, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). Counsel, in response, provided a copy of the applicant's Form I-94, Arrival/Departure Record, a copy of the biographical page of the applicant's passport, and the applicant's school records.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on October 16, 2013.

Counsel's assertions on appeal are not persuasive as the applicant's legal guardian could have initiated the filing of the TPS application on behalf of the applicant. The re-designation of Haiti was announced by public notice in the *Federal Register*, and was made available to the public on the USCIS' website. If the legal guardian was not sure of the filing procedures, she could have contacted USCIS National Customer Service for assistance.

The provisions for late registration 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. Counsel, on appeal, has not submitted evidence that the applicant 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 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 at 145.

Beyond the decision of the director, on March 7, 2013, the applicant was also asked to submit evidence establishing continuous residence since January 10, 2011 and continuous physical presence since July 23, 2011 in the United States. The applicant was informed that if she had a brief, casual, and innocent absence from the United States during these periods, 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 record reflects that the applicant departed the United States on June 4, 2011 and re-entered on August 21, 2011. As the applicant was not in the United States on July 23, 2011, she cannot establish continuous physical presence. Therefore, the applicant has failed to establish that she has met the criteria described in 8 C.F.R. § 244.2 (b). In addition, the applicant has not shown that her absence of 78 days (June 4, 2011 through August 20, 2011) was brief, casual, and innocent absence

or that said trip abroad was required by emergency or extenuating circumstances outside her control. The applicant has, therefore, failed to establish continuous residence as described in 8 C.F.R. § 244.2(c). Consequently, the TPS 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.