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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



U.S. Citizenship
and Immigration
Services

[REDACTED]

DATE: **JUL 16 2015** [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254a

ON BEHALF OF APPLICANT:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

A handwritten signature in cursive script that reads "Michael Shumway".

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for further proceedings consistent with this decision.

The applicant is 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. He filed a late initial TPS application. On July 14, 2014, the director denied the application because the applicant failed to establish his eligibility for late initial registration for TPS.

On appeal, the applicant asserts that he is eligible for late initial registration for TPS due to his pending application for adjustment of status.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.

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 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).

The issue in this proceeding is whether the applicant has established his eligibility for late initial registration for TPS.

The record reflects that the applicant filed a late initial TPS application on March 19, 2014.

On May 6, 2014, the applicant was requested to submit evidence to establish his eligibility for late initial registration after November 15, 2011, and his continuous residence and continuous physical presence in the United States. The director noted that in response, on May 15, 2014, the applicant submitted a statement; an August 12, 2005 request for evidence for evidence (pertaining to a then pending Form I-485 adjustment application); a December 12, 2005, Form I-485 transfer notice; an October 23, 2007, ASC appointment notice; an August 9, 2010, Form I-765 receipt notice; and, copies of several of the applicant's employment authorization documents.

The director determined that the applicant was not eligible for late initial registration. The director noted that the applicant's Form I-485, Application for Adjustment of Status, filed on June 24, 2005, as denied on June 28, 2006. Accordingly, the director denied the TPS application.

On appeal, the applicant asserts that he was not aware that his adjustment application had been denied as he had continued to renew his employment authorization based on his adjustment application, which he claims was pending and supports his late initial TPS application. He states that his employment authorization was renewed from July 31, 2008, through July 30, 2010; and from October 25, 2010, through October 24, 2012. The applicant submits these employment authorization cards, which reflect issuance pursuant to 8 C.F.R. § 274a.12(c)(9) for a pending adjustment application.

The record contains a copy of the decision denying the applicant's adjustment application, but the applicant's address on that decision contains a typographical error. The denial was mailed to the applicant at the following street address: [REDACTED]

However, the applicant's street address of record as of the date of mailing, as evidenced by his adjustment application, was [REDACTED]

In addition, electronic records indicate that the applicant was initially issued employment authorization on the basis of his pending adjustment application on October 12, 2005, with an expiration date of October 12, 2006. They further reflect that the applicant's employment authorization was extended on the same basis four times, from November 30, 2006 through October 2012. The applicant was not denied employment authorization until his subsequent Form I-765 application was denied on January 2, 2013. The applicant submitted another application for employment authorization on January 28, 2013, which was rejected on January 31, 2013.

Although the issue is not directly before us, the evidence cited above raises questions as to whether the applicant has ever been given adequate notice of the denial of his adjustment application. Regardless, for purposes of proving eligibility for late initial filing, a preponderance of the evidence shows that USCIS error led to the applicant's belief that his adjustment of status remained pending prior to his filing for TPS, a belief that he was given no reason to question until USCIS refused to again extend his employment authorization. Given the unique circumstances of this case, we find that the applicant's filing of his TPS application within 60 days of the second rejection of his employment authorization application on January 31, 2013 meets the requirements for a late initial filing.



Consequently, we remand the matter to the director for entry of a new decision determining whether the applicant meets the requirements for TPS. If the new decision is adverse to the applicant, it shall be certified to the AAO for review.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded to the director for further proceedings consistent with this decision.