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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **MAY 14 2015**

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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the application. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and 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. § 1254a. On July 31, 2014, the director denied the application because the applicant failed to establish eligibility for late registration.

On appeal, the applicant asserts that he is eligible for late registration as his spouse is currently a TPS registrant. The applicant provides a statement, a statement from his spouse, birth certificates for his children and family photographs. The applicant also resubmits evidence previously provided.

The regulations at 8 C.F.R. § 244.2(f), 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.

On January 21, 2010, the Secretary designated Haiti as a country eligible for TPS. On May 19, 2011, the Secretary redesignated Haiti for TPS eligibility which became effective on July 23, 2011. Under the redesignation persons applying for TPS offered to Haitian (and persons without nationality who last habitually resided in Haiti) must demonstrate that they have continuously resided in the United States since January 12, 2011, and that they have been continuously physically present in the United States since July 23, 2011. The TPS designation has been extended several times, with the latest extension granted until January 22, 2016, upon the applicant's re-registration during the requisite period.

To meet the initial registration requirements for the redesignation in 8 C.F.R. § 244.2(f)(1), Haitian applicants must have filed TPS applications during the initial registration period, May 19, 2011, through November 15, 2011. If applicants did not file their initial TPS applications during this time period, they must meet the late registration requirements as stated above in 8 C.F.R. § 244.2(f)(2). Specifically, to qualify for late registration, the applicant must provide evidence that during the initial registration period for redesignation (May 19, 2011 through November 15, 2011) the applicant fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2). 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. 8 C.F.R. § 244.9(b). To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. *Id.*

We conduct appellate review on a *de novo* basis. See *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 filed his initial TPS application on March 11, 2014 so that he registered for TPS outside of the initial registration period.

On April 21, 2014, 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). The applicant, in response, provided the evidence of his spouse's TPS eligibility and a marriage certificate, which indicated that the applicant and his spouse were married on [REDACTED] in [REDACTED] Nebraska. The director determined that the applicant had failed to establish eligibility for late registration as his marriage to a TPS registrant occurred subsequent to the initial registration period. Accordingly, the director denied the application.

On appeal, the applicant asserts that he and his spouse have been dating since 1999, but their wedding was postponed in October 2002, due to a lack of finances. The applicant also asserts that he entered the United States in 2011 and rejoined his spouse in the United States, but they waited until 2013 to get married because they could not finance their dream wedding.

Accordingly, the record reflects that the applicant was not the spouse of an alien currently eligible to be a TPS registrant during the requisite initial registration period. It is noted that the applicant asserts that he and the applicant resided together in the United States since his entry, but the applicant has not made any assertions that he entered into a common law marriage prior to [REDACTED]. Further, the state of Nebraska, the applicant's current residence and place of marriage,, does not recognize common law marriages entered into after 1923. N.R.S. 42-104.

The applicant has not established that he has met the provisions outlined in 8 C.F.R. §§ 244.2(f)(2) or (g) for late registration. Accordingly, we affirm the director's finding that the applicant's marriage of [REDACTED] does not establish late registration eligibility as it occurred subsequent to the initial registration period.

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 Siddiqui v. Holder*, 670 F.3d at 741.

The applicant indicated on his TPS application that he entered the United States on December 2, 2011. The applicant's Form I-94, Arrival/Departure Record, indicates that he was paroled into the United States on December 6, 2011. As such, the applicant's arrival in the United States occurred subsequent to the eligibility period. Therefore, he cannot meet the criteria for continuous residence in the United States since January 12, 2011 and continuous physical presence in the United States since July 23, 2011, as described in 8 C.F.R. § 244.2(b) and (c).

The record contains a sworn statement of the applicant made at the time he applied for admission to the United States on December 4, 2011. In his sworn statement, the applicant indicated that he is also a citizen of Costa Rica and resided in Costa Rica for approximately six years. As the applicant has failed to demonstrate late registration eligibility and continuous residence and continuous physical presence in the United States during the requisite periods, the issue of whether the applicant was firmly resettled in another country prior to entering the United States need not be addressed in the current proceedings.

The appeal is dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal. In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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NON-PRECEDENT DECISION

ORDER: The appeal is dismissed.