



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-D-J-

DATE: OCT. 1, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

APPLICATION: FORM I-821, APPLICATION FOR TEMPORARY PROTECTED STATUS

The Applicant, a native and citizen of Haiti, seeks review of the decision withdrawing the Applicant's temporary protected status (TPS). *See* Immigration and Nationality Act (the Act) § 244, 8 U.S.C. § 1254(a). The Director, California Service Center, withdrew temporary protected status (TPS) and denied the application for re-registration. The matter is now before us on appeal. The appeal will be dismissed.

On February 18, 2015, the Director determined that the Applicant was not eligible to apply for re-registration for TPS, as he had not been granted TPS. The Director also determined that the Applicant had not established eligibility for late registration under 8 C.F.R. § 244.2(g).

On appeal, the Applicant asserts that the Director failed to establish the basis for the denial of the application. The Applicant also asserts that he is eligible for late registration as he filed the current TPS application within 60 days from the final decision last rendered.

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, as defined in section 101(a)(21) of the Act, of a foreign 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.

The Secretary designated (January 21, 2010) and redesignated (July 23, 2011) Haiti as a country eligible for TPS. Under the redesignation, persons applying for TPS offered to Haitians (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 July 22, 2017, 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) 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. 8 C.F.R. § 244.9(b). To meet this burden of proof the applicant must provide supporting documentary evidence of eligibility apart from the applicant's own statements. *Id.*

We conduct appellate review on a *de novo* basis. *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 Applicant filed a Form I-589, Application for Asylum and Withholding of Removal, on July 15, 1999. The oral decision of the immigration judge (IJ) issued on November 17, 1999, indicated that the Applicant filed a frivolous application for asylum. On December 6, 2001, the Board of Immigration Appeals (BIA) summarily dismissed the appeal. 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 frivolous finding.

The Applicant's initial TPS application, filed during the initial designation for Haiti, was denied by the Director on June 22, 2010, because it was determined that the Applicant was permanently ineligible for any benefit under section 244 of the Act for filing a frivolous asylum application. No appeal was filed from the denial of that application. Subsequent to the initial registration period for the re-designation for Haiti, the Applicant attempted to file several TPS applications from February 29, 2012 through September 21, 2012. However, these applications were either rejected or returned to the Applicant for lack of the required fee or lack of the required documents to support a fee waiver request.

The Applicant's TPS application filed on October 9, 2012, was denied by the Director on July 25, 2013, because the Applicant did not submit evidence establishing late registration eligibility. In dismissing the appeal on February 11, 2014, we concurred with the Director's finding. We determined that the Applicant was not eligible for late registration as a TPS application had not been filed within the 60-day period following the BIA's decision of December 28, 2011. We also noted that even had a complete application been received on February 29, 2012, the applicant would remain ineligible for late registration, as the application was received 62 days after the BIA's decision.

The Applicant filed the current TPS application on March 31, 2014, and indicated that it was an application for re-registration or renewal of temporary treatment benefits. On July 9, 2014, the application was erroneously approved.

The re-registration period is limited to individuals: 1) who have previously registered for TPS under the designations of Haiti and whose applications have been granted; or 2) who have not previously applied for TPS and meet at least one of the criteria under the late initial registration provisions described in 8 C.F.R. § 244.2(f)(2), as well as all other TPS eligibility criteria. Extension of the Designation of Haiti for Temporary Protected Status, 80 Fed. Reg. 51582 (August 25, 2015).

In a notice to intent to revoke TPS dated November 13, 2014, the Applicant was advised that because he had not been granted TPS, his application for re-registration had been approved in error. The Applicant was also advised that he was ineligible for late registration because a TPS application was not filed within 60 days of the BIA's decision of December 28, 2011.

On appeal, the Applicant asserts that at the time the BIA rendered its decision, he was eligible to reapply for TPS, but he was waiting for a decision on an appeal pending before us. However, the record reflects that there was no appeal pending before us during the initial registration period or at the time the BIA rendered its decision in 2011. The Applicant also asserts that he filed a TPS application within 60 days of our final decision so that he is eligible for late registration. However, in accordance with the requirements of 8 C.F.R. § 244.2(f), (g), in order to qualify for late registration, an application for relief from removal had to be pending during the time of the initial registration period. As noted, the Applicant did not file a TPS application, the basis the Applicant's appeal before us, during the initial registration period.

The applicant had a 60-day period immediately following the BIA's decision of December 28, 2011, to file an application for late registration in order to meet the requirements described in 8 C.F.R. § 244.2(g). The TPS application properly filed on October 9, 2012, was filed outside of the 60-day period from the BIA's decision. Assuming, *arguendo*, that an incompletely submitted TPS application from the Applicant had been received as properly filed on February 29, 2012, the Applicant would still have been ineligible for late registration, as that application was received 62 days after the BIA rendered its decision.

Because the Applicant was never granted TPS, he was not eligible to re-register for TPS. The Applicant, on appeal, has not established that he has met the provision outlined in 8 C.F.R. § 244.2 (g) for late registration. Consequently, the Director's decision to withdraw TPS and deny the application for registration on these grounds will be affirmed.

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.

ORDER: The appeal is dismissed.

Cite as *Matter of M-D-J-*, ID# 14457 (AAO Oct. 1, 2015)