



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

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

MATTER OF J-M-A-

DATE: OCT. 8, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Applicant, a native and citizen of Haiti, is seeking temporary protected status. *See* Section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a. The Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The matter is remanded for further action consistent with this decision.

On December 10, 2014, the Director denied the application because the Applicant failed to establish eligibility for late registration, as the Form I-821 was not filed within the 60-day period after the expiration or termination of his Form I-751, Petition to Remove Conditions on Residence.

On appeal, the Applicant asserts that he is eligible for late registration, as his Form I-751 petition does not serve as the expiring or terminating event of a qualifying condition under the late registration provisions. The Applicant asserts that, as his application for adjustment of status is subject to review in removal proceedings, the 60-day deadline to file a Form I-821, Application for Temporary Protected Status, has not been triggered. The Applicant contends that he does not need to submit evidence that his case is under review by the immigration judge because he has not yet been placed in removal proceedings.

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

*Matter of J-M-A*

- (f) (1) Registers for Temporary Protected Status 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 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) 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 record reflects that the Applicant filed a Form I-485, Application to Register for Permanent Residence or Adjust Status, on July 6, 2008, which was approved on March 2, 2009. On December 27, 2010, the applicant filed a Form I-751. On May 24, 2012, the Form I-751 was denied. The Applicant filed a motion to reopen which was granted. Citing 8 C.F.R. 216.5(f), the Field Office Director denied the Form I-751, and terminated the applicant's conditional lawful permanent resident status on February 19, 2013.

The Applicant filed this initial TPS application on May 27, 2014.

On August 18, 2014, the Applicant was asked to submit evidence establishing eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2) and (g). The applicant, in response, asserted that he is eligible for late registration as the denial of his Form I-751 is subject to review in removal proceedings. The applicant also asserted that the Form I-751 extended the pending nature of his approved Form I-485.

The Director determined that the Applicant had failed to establish eligibility for late registration as the evidence of record did not indicate that the Applicant was/is in removal proceedings or that the Form I-751 was under review or on appeal before an immigration judge. The Director concluded that as the TPS application was not filed within 60-days following the expiration or termination of the Form I-751, the Applicant was not eligible for late registration.

When a Form I-751 is denied, the Director shall provide the applicant with written notice of the decision and shall issue a notice to appear placing the Applicant in removal proceedings. The Applicant's lawful permanent resident status shall be terminated as of the date of the Director's written decision. No appeal shall lie from the decision of the Director; however, the Applicant may seek review of the decision in removal proceedings. *See* 8 C.F.R. §§ 216.4(d)(2) and 216.5(f).

Although the decision explained to the Applicant that he may request a review of the determination in removal proceedings, there is no evidence in the record that the Field Office Director issued a charging document placing the Applicant in removal proceedings.

In the instant case, the Applicant has not been placed in removal proceedings as required under 8 C.F.R. §§ 216.4(d)(2) or 216.5(f). Therefore, he has not had the opportunity to seek review of the Director's Form I-751 denial decision in front of an immigration judge. Upon issuance of a charging document, an alien does not have the right to appeal the Director's decision denying temporary

*Matter of J-M-A*

protected status, as the alien has the right to a *de novo* determination of his or her eligibility for temporary protected status in removal proceedings. *See* 8 C.F.R. § 244.10(c)(2). As the regulations require the issuance of a charging document to the Applicant upon denial of his Form I-751, which was not done in this instance, jurisdiction over the Applicant's Form I-821 would subsequently properly lie with the court in immigration proceedings. Accordingly, the matter will be remanded to the Director to comply with the requirements of 8 C.F.R. §§ 216.4(d)(2) and 216.5(f).

**ORDER:** The matter is remanded to the Director for further proceedings consistent with the foregoing opinion.

Cite as *Matter of J-M-A-*, ID# 13583 (AAO Oct. 8, 2015)