



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

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

MATTER OF J-E-

DATE: SEPT. 17, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Applicant, a native and citizen of Haiti, seeks temporary protected status. *See* Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254a. The Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

On November 4, 2014, the Director denied the application because the Applicant failed to establish eligibility for late registration. On appeal, the Applicant asserts that he initially applied for TPS during the initial registration period, but his application was returned to him because it was incomplete.

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 as designated by the Attorney General, now the Secretary, Department of Homeland Security (Secretary), 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 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, an 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 an applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by United States 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.*

(b)(6)

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To qualify for late registration, the Applicant must provide evidence that during the initial registration period from May 19, 2011, through November 15, 2011, he fell within 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 Applicant asserts that he submitted an application for Temporary Protected Status on October 21, 2011, but that it was rejected because he had filled out part of the form incorrectly. The Applicant further asserts that he corrected the form and returned it to USCIS, but it, too, was rejected. The Applicant submitted a copy of a cancelled teller check from [REDACTED], [REDACTED], Maine, made out to USCIS.

On June 10, 2014, the Applicant was provided the opportunity to submit evidence establishing eligibility for late registration, as set forth in 8 C.F.R. § 244.2(f)(2). In response, the Applicant submitted evidence of his admissions into the United States under a C1 nonimmigrant visa on November 12, 2010, and January 28, 2011. The Director denied the application on November 4, 2014, as the evidence submitted was insufficient to demonstrate the Applicant's late registration eligibility for TPS.

On appeal, the Applicant contends that he submitted two TPS applications in 2011, the second a corrected application, and that his initial TPS filing was within the initial registration period. The Applicant asserts that he followed the instruction of a USCIS representative in correcting his initial and timely TPS application and the application payment was processed by USCIS. Accordingly, the Applicant requests that his current TPS application, filed April 1, 2014, be considered timely filed.

The 60-day filing period after the expiration or termination of a qualifying condition at 8 C.F.R. § 244.2(g) is not a statute of limitations subject to equitable tolling. Although courts have found certain filing deadlines to be statutes of limitations subject to equitable tolling in the context of removal or deportation, no binding case has determined the 60-day TPS late registration filing deadline to be subject to equitable tolling.

However, even assuming, *arguendo*, that the provision set forth at 8 C.F.R. § 244.2(g) constitutes a statute of limitation subject to equitable tolling, the record does not demonstrate that the Applicant is entitled to such equitable relief. To warrant equitable tolling, an applicant must demonstrate that he or she exercised due diligence in pursuing the case. *See Jobe v. INS*, 238 F.3d 96 (1st Cir. 2001) (an alien must demonstrate that he exercised sufficient diligence to warrant an equitable tolling of the statute). The Applicant asserts that after the rejection of his TPS applications in 2011, he did not immediately attempt to file his TPS application and focused on preparing a Form I-485. The record reflects that the Applicant filed a subsequent TPS application on April 1, 2014, over two years after his initial TPS application submissions. Accordingly, even if the initial TPS registration period were subject to equitable tolling, the Applicant has not demonstrated the requisite due diligence.

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As the Applicant did not file his application during the initial registration period or during the allotted 60-day late registration period described in 8 C.F.R. § 244.2(g), the Director's decision to deny the application for TPS will be affirmed.

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 J-E-*, ID# 12928 (AAO Sept. 17, 2015)