



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

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

MATTER OF M-S-

DATE: FEB. 18, 2016

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* Immigration and Nationality Act (the Act) § 244, 8 U.S.C. § 1254(a). The Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

On April 29, 2015, the Director denied the application because it was determined that the Applicant: (1) did not establish eligibility for late registration; (2) did not establish continuous residence in the United States since January 12, 2011; (3) did not establish continuous physical presence in the United States since July 23, 2011; and (4) had firmly resettled in Belize prior to arriving in the United States.

On appeal, the Applicant requests that his appeal be sustained as he contends he qualifies for TPS. The Applicant asserts that he is a citizen of Haiti and U.S. Citizenship and Immigration Services (USCIS) has continued to grant TPS to Haitian nationals since the initial designation date. The Applicant states he is neither a flight risk nor a danger to the community as he was granted parole into the United States and continues to receive extensions of that parole.

We conduct appellate review on a *de novo* basis. 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.

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 status 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).

(b)(6)

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The burden of proof is upon the Applicant to establish that the above requirements are met. Applicants shall submit all documentation as required in the instructions or requested by 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.*

The first issue to be addressed is whether the Applicant has demonstrated eligibility for late registration. The record reflects that the Applicant filed his initial TPS application on December 4, 2014. On January 13, 2015, the Applicant was requested to submit evidence establishing eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The Applicant, in response, submitted copies of his initial and current Form I-94, Arrival/Departure Record, paroling the Applicant into the United States on June 6, 2013, and January 21, 2015. The Applicant also submitted a copy of Form I-213, Record of Deportable Inadmissible Alien, dated February 11, 2013. The Director determined that the evidence submitted was not sufficient to establish eligibility for late registration and denied the application.

We affirm the Director's finding. The Applicant cannot attribute the grant of parole into the United States as a provision for late registration eligibility. In order to be eligible for late registration under 8 C.F.R. § 244.2(f)(2)(iii), the Applicant must have obtained the status before the initial registration period had closed. *See* 8 C.F.R. § 244.2(f)(2). The Applicant was granted parole into the United States subsequent to the initial registration period and, therefore, has not met the provision for late registration under 8 C.F.R. § 244.2(f)(2)(iii). Further, the Applicant has not submitted any evidence to establish that he has met any of the other provisions for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the Director's decision to deny the application for TPS on this ground will be affirmed.

The second and third issues to be addressed are whether the Applicant has established continuous residence in the United States since January 12, 2011, and continuous physical presence in the United States since July 23, 2011.

The evidence of record indicates that on December 20, 2011, the Applicant applied for admission into the United States at the [REDACTED] port of entry. During secondary inspection, the Applicant informed Customs and Border Protection that he had been residing in Belize from May 2000 until December 16, 2011.

The record, however, contains a copy of the Applicant's Haitian passport, indicating that the Applicant entered Belize with a visitor permit in January 2000, and valid through April 30, 2000. The Applicant was found to be inadmissible to the United States under section 212(a)(7)(A)(i)(I) of the Act,¹ 8 U.S.C § 1182(a)(7)(A)(i)(I), and was served with a Form I-860, Notice and Order of Expedited Removal, on [REDACTED] 2011. The Applicant was expeditiously removed from the United States on or about [REDACTED] 2012, pursuant to section 235(b)(1) of the Act.

¹ Section 212(a)(7)(A)(i)(I) of the Act shall not be applied in the determination of an alien's inadmissibility under section 244 of the Act. Section 244(c)(2)(A)(i) of the Act; 8 C.F.R. § 244.3(a).

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On February 11, 2013, the Applicant applied for admission into the United States at the [REDACTED] port of entry. During secondary inspection, the Applicant asserted that he departed Belize a week before applying for admission into the United States. The Applicant was found to be inadmissible to the United States under section 212(a)(7)(A)(i)(I) of the Act. On June 6, 2013, the Applicant was paroled into the United States pursuant to 8 C.F.R. § 212.5(d).

Section 244(c) of the Act states that a national of a designated foreign state is eligible for TPS if, (i) the alien has been continuously physically present in the United States since the effective date of the most recent designation of that state; and (ii) the alien has continuously resided in the United States since such date as the Secretary may designate. The Secretary re-designated the dates required to establish continuous residence and continuous physical presence for Haitian nationals as January 12, 2011, and July 23, 2011, respectively. The Applicant arrived in the United States subsequent to the eligibility periods and, therefore, he cannot meet the criteria for continuous residence and continuous physical presence as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the Director's decision to deny the application for TPS on these grounds will be affirmed.

The fourth issue to be addressed is whether the Applicant was firmly resettled in another country prior to arriving in the United States.

As defined in 8 C.F.R. § 208.15, an alien is considered to be firmly resettled if, prior to arrival in the United States, he or she entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement unless he or she establishes:

- (a) That his or her entry into that country was a necessary consequence of his or her flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that country; or
- (b) That the conditions of his or her residence in that country were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled. In making his or her determination, the asylum officer or immigration judge shall consider the conditions under which other residents of the country live; the type of housing, whether permanent or temporary, made available to the refugee; the types and extent of employment available to the refugee; and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation that includes a right of entry or reentry, education, public relief, or naturalization, ordinarily available to others resident in the country.

On December 22, 2011, and February 11, 2013, Forms I-867A, Record of Sworn Statement in Proceedings under section 235(b)(1) of the Act, were executed in the Applicant's native language. On December 22, 2011, while under oath, the Applicant asserted that in 1997 he departed Haiti to Panama where he resided for two years; that he left Panama to seek a better life in Belize where he

resided from May 2000 to December 16, 2011, married a Belizean national in 2002, and became a citizen of Belize in 2004. The Applicant added that he entered Mexico with his Belize passport and that he was coming to the United States to seek a better life. On February 11, 2013, while under oath, the Applicant stated that he departed Belize, entered Mexico with his Belize driver's license and then traveled through Mexico by bus a week before applying for admission into the United States. The Applicant claimed that he was employed as a security guard until he departed Belize in 2011.

The Applicant, on appeal, has not addressed the firm resettlement finding, and no any additional documents have been submitted to overcome the Director's finding.

The Applicant has not established the regulatory exceptions in 8 C.F.R. § 208.15(a) or (b) applies in order to meet the firm resettlement bar. In considering the totality of the evidence, including the fact that the Applicant obtained citizenship from Belize, we find that the Applicant had been firmly resettled in Belize prior to the arrival in the United States. Specifically, the Applicant has not asserted, or provided evidence to show, that he remained in Belize only long enough to arrange onward travel, as he was in that country over for over 10 years. The record further reflects that the Applicant established significant ties to that country; namely, a spouse and citizenship. Moreover, the Applicant has not demonstrated that the conditions of his residence in Belize were so substantially and consciously restricted by the Belizean government that he was not in fact resettled. Consequently, the Director's decision to deny the application for TPS on this ground will also be affirmed.

The appeal is dismissed for the above stated reasons. 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-S-*, ID# 15166 (AAO Feb. 18, 2016)