



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

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

MATTER OF F-F-

DATE: MAY 5, 2016

APPEAL OF CALIFORNIA 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) section 244, 8 U.S.C. § 1254a. Temporary Protected Status (TPS) provides lawful status and protection from removal for foreign nationals, of specifically designated countries, who register during designated periods, satisfy country-specific continuous residence and physical presence requirements, are admissible to the United States, are not firmly resettled in another country, and are not subject to certain criminal- and security-related bars.

The Director, California Service Center, denied the application. The Director concluded that the Applicant did not establish eligibility for late registration.

The matter is now before us on appeal. In the appeal, the Applicant claims that she is eligible for late registration as she was in a valid nonimmigrant status and had, or had sought, parole status. The Applicant asserts that a Form I-589, Application for Asylum and for Withholding of Removal, should have been filed earlier; however, her former attorney did not apply for asylum on her behalf until May 25, 2012. The Applicant states that the delayed actions of her former attorney and the hardship should not be attributed to her. The Applicant adds that there was an error regarding her continuous presence, as she was out of the country temporarily.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking TPS. Section 244 of the Act, 8 U.S.C. § 1254a, 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;

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- (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.
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- (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 burden of proof is upon the Applicant to establish that the above requirements are met. *See* 8 C.F.R. § 244.9(a)(3). 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 this burden of proof, the Applicant must provide supporting documentary evidence of eligibility apart from the Applicant's own statements. *Id.*

II. FACTS AND PROCEDURAL HISTORY

The Applicant was last admitted into the United States as a nonimmigrant visitor on June 24, 2011, and was authorized to remain in the United States until December 23, 2011. The Applicant filed a Form I-589 on December 5, 2011. The Applicant's Form I-589 was referred to an immigration judge on June 28, 2012, as the Applicant was issued a Form I-862, Notice to Appear, on that date, which placed her in removal proceedings. Removal proceedings were administratively closed on August 26, 2015.

The Applicant filed a Form I-821, Application for Temporary Protected Status, on September 19, 2014.¹ Prior to the denial of this application, the Applicant was requested to submit evidence to establish eligibility for late registration under 8 C.F.R. § 244.2(f)(2). The Applicant, however, did not provide the requested documentation.

III. ANALYSIS

The issues presented on appeal are whether the Applicant has established eligibility for late registration and has shown continuous physical presence in the United States. The Director determined that the evidence submitted by the Applicant did not establish her eligibility for late registration under 8 C.F.R. § 244.2(f)(2). On appeal, the Applicant claims that she is eligible for late registration under the provisions described in 8 C.F.R. § 244.2(f)(2)(i) and (iii). We find that the Applicant has established continuous physical presence in the United States since July 23, 2011. However, we also find that the evidence of record does not establish the Applicant has continuously resided in the United States since January 12, 2011, or that she qualifies for any of the provisions described in 8 C.F.R. §§ 244.2(f)(2) or (g) for late registration.

A. Eligibility

As stated above, the Applicant has been found ineligible for TPS under section 244(c)(1)(A)(iv) of the Act.

1. Late Registration

An applicant who did not register for TPS during the initial registration period or subsequent extension of such designation may qualify for late registration upon satisfaction of the conditions in 8 C.F.R. §§ 244.2(f)(2), (g). To qualify for late registration, Haitian applicants must provide evidence that during the initial registration period for the redesignation, May 19, 2011, through November 15, 2011, he or she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2). Further, if the qualifying condition or application expired or was terminated, an applicant must file for TPS within a

¹ The Applicant submitted a Form I-821 on January 29, 2013; however, it was rejected due to lack of signature and the required fee was incorrect or had not been provided.

60-day period immediately following the expiration or termination of the qualifying condition. 8 C.F.R. § 244.2(g).

The Applicant's nonimmigrant status rendered her eligible for late registration under 8 C.F.R. § 244.2(f)(2)(i) as her status expired on December 23, 2011, which is subsequent to the end of the initial registration period. The regulation at 8 C.F.R. § 244.2(g), however, requires a Form I-821 to be filed within a 60-day period immediately following the expiration or termination of conditions described in 8 C.F.R. § 244.2(f)(2). The Applicant has not shown that her nonimmigrant status was extended, and the Form I-821 was filed over 2 years after the end of her 60-day late registration period. Therefore, the Applicant has not established late registration eligibility under 8 C.F.R. § 244.2(g).

A Form I-589 that is pending or subject to further review or appeal during the initial registration period, May 19, 2011, through November 15, 2011, renders applicants eligible for late registration. 8 C.F.R. § 244.2(f)(2)(ii). However, a delayed filing of a Form I-589 is not a provision for late registration described in 8 C.F.R. § 244.2(f)(2). The Applicant's Form I-589 was filed after the initial registration period had closed and therefore the filing does not qualify the Applicant for late registration eligibility under 8 C.F.R. § 244.2(f)(2)(ii).²

The Applicant claims to have, or have sought, parole status. However, USCIS records do not reflect, and the Applicant has not established, that during the initial registration period the Applicant was a parolee or that a parole request was pending. Therefore, the Applicant has not established late registration eligibility under 8 C.F.R. § 244.2(f)(2)(iii).

The provisions for late registration outlined in 8 C.F.R. §§ 244.2(f)(2) and (g) were created in order to ensure that TPS benefits were made available to aliens who did not register during the initial registration period due to circumstances specifically identified in the regulations. In this case, the Applicant has not established that she has met the provisions outlined in 8 C.F.R. §§ 244.2(f)(2) and (g) for late registration.

III. CONTINUOUS RESIDENCE AND CONTINUOUS PHYSICAL PRESENCE

1. Continuous Physical Presence

The Applicant claims on appeal that the Director made an error regarding her continuous physical presence as she was out of the United States temporarily. We note that the Director did not make any findings related to continuous physical presence. The regulation at 8 C.F.R. § 244.1 provides:

Continuously physically present means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have

² The Form I-589 was first submitted on November 17, 2011; however, it was rejected. We note even if the Form I-589 was filed on November 17, 2011, it would not qualify the Applicant for late registration under 8 C.F.R. § 244.2(ii) as it would have been filed after the initial registration period had closed.

(b)(6)

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failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within 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 been continuously physically present in the United States since July 23, 2011.

USCIS records reflect that the Applicant has been admitted to the United States, as a nonimmigrant visitor, on several occasions since 2008, and she was last admitted to the United States on June 24, 2011. USCIS records do not reflect that the Applicant has departed the United States since her last arrival on June 24, 2011. Accordingly, we find that the Applicant has established continuous physical presence in the United States since July 23, 2011. 8 C.F.R. § 244.2(b).

2. Continuous Residence

The regulation at 8 C.F.R. § 244.1 provides:

Continuously resided means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

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.

USCIS records reflect that prior to the Applicant's last arrival on June 24, 2011, the Applicant was admitted to the United States on March 15, 2010, and she departed on April 6, 2010. We note that the Director did not make any findings related to continuous residence and it was not discussed on appeal by the Applicant. The record lacks evidence to establish that the Applicant has been continuously residing in the United States since January 12, 2011. Furthermore, as the Applicant's June 24, 2011, arrival in the United States occurred subsequent to the eligibility period, she cannot meet the criteria for continuous residence in the United States since January 12, 2011, as described in 8 C.F.R. § 244.2(c).

The interviewing officer's notes, taken at the time of the Applicant's asylum interview on May 4, 2012, indicate that the Applicant stated that she had been residing in [REDACTED] for 19 years prior to coming to the United States. As the Applicant has not demonstrated late registration eligibility and continuous residence in the United States during the requisite period, 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.

IV. CONCLUSION

An applicant for TPS has the burden of proving that he or she meets the requirements for this benefit and is otherwise eligible under the provisions of section 244 of the Act. The Applicant has not established eligibility for TPS as the Applicant has not shown eligibility for late registration or that she maintained continuous residence in the United States since January 12, 2011. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of F-F-*, ID# 15661 (AAO May 5, 2016)