



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

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

MATTER OF V-J-

DATE: MAY 5, 2016

APPEAL OF VERMONT 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, Vermont Service Center, denied the current application for re-registration. The Director concluded that the Applicant had not previously been granted TPS, and as such the Director found the Applicant was not eligible to apply for re-registration of TPS.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that her Form I-821, Application for Temporary Protected Status, would have been timely filed, but for the ineffective assistance of her consultant. The Applicant contends that a subsequent Form I-821 and Form I-765, Application for Employment Authorization, filed in January 2012 were approved. The Applicant adds that she does not understand why the current and earlier applications were denied. The Applicant states that she is currently married to a TPS registrant, and request that her case be reconsidered and approved.

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

I. LAW

The Applicant is seeking TPS based on an application for re-registration or renewal of TPS benefits. 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;

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- (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.

With respect to re-registration requirements, 8 C.F.R. § 244.17 provides that:

- (a) Aliens granted Temporary Protected Status must re-register periodically in accordance with USCIS instructions. Such registration applies to nationals of those foreign states designated or redesignated for more than one year by

DHS. Applicants for periodic re-registration must apply during the registration period provided by USCIS . . . .

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. ANALYSIS

The issue presented on appeal is whether the Applicant has established eligibility for TPS. The Director determined that because the Applicant's initial TPS application had been denied, the Applicant was not eligible to seek re-registration for TPS.

On appeal, the Applicant claims that subsequent to her January 18, 2010, arrival into the United States, she filled out a TPS application, and was informed by her consultant that the application was in process. The Applicant states that the TPS application would have been timely filed, but for the ineffective assistance of her consultant. The Applicant claims that in January 2012, she filed a Form I-821 and Form I-765, and her case was approved on May 15, 2012. The Applicant asserts that she does not understand why her current and an earlier TPS application have been denied. The Applicant adds that she is currently married to a lawful permanent resident.

In support of her assertions, the Applicant submits a copy of the pages of her passport, a letter of employment, her employment authorization card, and a copy of a Form I-797, Notice of Action, for the receipt of a Form I-765 on January 11, 2012.

The Applicant has established she is eligible for late registration under 8 C.F.R. § 244.2(f)(2)(i). We further conclude, though, that the evidence of record does not establish that the Applicant is eligible to re-register for TPS, or that she has continuously resided in the United States since January 12, 2011.

### A. Eligibility

As stated above, the Applicant has been found ineligible for TPS under 8 C.F.R. § 244.17(a).

#### 1. Re-Registration

Filing an application for TPS during a designated re-registration period does not render all individuals eligible for the benefit sought. The re-registration period is limited to individuals who have previously registered for TPS and whose applications have been granted, or those who did not file during the initial registration period and meet any of the late initial registration criteria described in 8 C.F.R.

(b)(6)

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§§ 244.2(f)(2) and (g), in addition to the other TPS eligibility requirements. Extension of the Designation of Haiti for TPS, 80 Fed. Reg. 51582 (August 25, 2015).

On appeal, the Applicant states that she had been granted TPS, and work authorization related to TPS. USCIS records reflect that the Applicant applied for and was granted employment authorization under 8 C.F.R. § 274a.12(c)(17) as a nonimmigrant visitor for business who is a domestic servant of a U.S. citizen. USCIS records do not reflect that a TPS application or an application for work authorization under section 8 C.F.R. § 274a.12(c)(19)<sup>1</sup> was filed in January 2012.

The Applicant filed the current TPS application on May 5, 2014, and indicated at part 1.b. that she was re-registering for TPS or renewal of temporary treatment benefits because she had previously been granted TPS or temporary treatment benefits. The record reflects, however, that the Applicant's TPS application filed on December 12, 2012, was denied on August 15, 2013.

In accordance with 8 C.F.R. § 244.17(a), an applicant must have been granted TPS prior to a subsequent re-registration for TPS benefits. However, at the time of the Applicant's filing for TPS re-registration, she had not been granted TPS and did not have a pending TPS application from the initial registration period. As such, the Applicant is not eligible to re-register for TPS.

## 2. Late Registration

As the Director's decision did not address whether the Applicant was attempting to file a late initial application for TPS, we will further consider her eligibility for late registration under 8 C.F.R. §§ 244.2(f)(2) and (g).

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

On appeal, the Applicant claims that she is currently married to a TPS registrant, and indicated on her Form I-821 that her marriage occurred on [REDACTED] 2013. The Applicant provided her spouse's alien registration number, but did not submit a copy of the marriage certificate. In order to be eligible for late registration under 8 C.F.R. § 244.2(f)(2)(iv), the Applicant must be the spouse of an alien currently eligible to be a TPS registrant, and show that she was married to the TPS registrant during the initial registration period, May 19, 2011, through November 15, 2011. The Applicant has not

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<sup>1</sup> An alien applying for TPS pursuant to section 244 of the Act.

demonstrated that she is eligible for late registration under 8 C.F.R. § 244.2(f)(2)(iv) as the Applicant's spouse is a lawful permanent resident, not a TPS registrant.

The Applicant indicates that she does not understand why each TPS application has been denied.

USCIS records reflect that the Applicant was issued a nonimmigrant visa on January 18, 2010, was admitted to the United States on January 19, 2010, and departed May 25, 2010. The Applicant was again issued a nonimmigrant visa on March 24, 2011, which expired on March 13, 2012. The Applicant was admitted to the United States on June 29, 2011, and was authorized to remain in the United States until December 28, 2011. On January 10, 2012, a Form I-765 was filed under 8 C.F.R. § 274a.12(c)(17), as a nonimmigrant visitor for business who is a domestic servant of a U.S. citizen. On the same date, the Applicant requested an extension of stay and filed a Form I-539, Application to Extend/Change Nonimmigrant Status. Both applications were approved on May 15, 2012, and the Applicant's nonimmigrant status was extended from December 29, 2011, to June 28, 2012. On July 13, 2012, the Applicant filed another Form I-539, which was denied on February 5, 2013, due to abandonment.

A TPS application was initially received on November 28, 2012; however, it was rejected as it was not signed. A benefit request which is rejected will not retain a filing date. 8 C.F.R. §103.2(a)(7)(iii). The TPS application filed December 12, 2012, was submitted after the initial registration period had closed.

In denying that application, the Director concluded that the Applicant did not establish eligibility for late registration under 8 C.F.R. § 244.2(f)(2). The Applicant did not establish that during the initial registration period, May 19, 2011, through November 15, 2011, she was a nonimmigrant; had been granted voluntary departure status or any relief from removal; had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which was pending or subject to further review or appeal; was a parolee or had a pending request for reparole; or was a spouse or child of an alien currently eligible to be a TPS registrant. 8 C.F.R. § 244.2(f)(2). The Director also concluded that the Applicant did not establish eligibility for late registration under 8 C.F.R. § 244.2(g). The Director determined that the extension of the Applicant's nonimmigrant status through June 28, 2012, had been filed after the 60-day period following the expiration of her nonimmigrant status had lapsed. The Applicant did not file an appeal from the denial of that application.

Contrary to the Director's decision, as of June 29, 2011, the Applicant was a nonimmigrant during the initial registration period, and her Form I-539 was filed within 12 days after her nonimmigrant status had expired. The record reflects that at the time her TPS application was filed on December 12, 2012, the Applicant submitted a copy of her Form I-94, Arrival-Departure Record, which established the extension of her nonimmigrant through June 28, 2012. The Applicant continued to maintain her nonimmigrant status until her subsequent Form I-539 was denied on February 5, 2013.

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. As the TPS application was filed while the Applicant was in a nonimmigrant status, the Applicant has established late registration eligibility under section 8 C.F.R. § 244.2(f)(2)(i). Therefore, the Director's finding in this specific matter will be withdrawn.

### III. CONTINUOUS RESIDENCE

While the regulation at 8 C.F.R. § 244.2(f)(2) allow applicants who are TPS-eligible to file applications after the initial registration period had closed, this regulation does not relax the requirements for eligibility for TPS. 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.

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.

The Director did not make any findings related to continuous residence, and it was not discussed on appeal by the Applicant. Prior to the Applicant's last arrival on June 29, 2011, the Applicant was admitted to the United States on January 19, 2010, and departed on May 25, 2010. The pages of the Applicant's passport reflect entry and exit stamps in and out of Haiti and the Dominican Republic from June 30, 2010, through May 5, 2011. Based on the entry and exit stamps in her passport, the Applicant was traveling between Haiti and Dominican Republic and remained outside of the United States until June 29, 2011. As such, the record demonstrates that the Applicant has not been continuously residing in the United States since January 12, 2011. Furthermore, as the Applicant's June 29, 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).

### 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 maintained continuous residence in the United States since January 12, 2011, and she has not shown that at the time of filing for TPS re-registration, she had been granted TPS, or had a pending TPS application from the initial registration period. Accordingly, we dismiss the appeal.

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**ORDER:** The appeal is dismissed.

Cite as *Matter of V-J-*, ID# 15713 (AAO May 5, 2016)