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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 04 2011

IN RE: Applicant: [redacted]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the California Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the California Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a citizen of Haiti who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to establish he had: 1) continuously resided in the United States since January 12, 2010; and 2) been continuously physically present in the United States since January 21, 2010.

On appeal, the applicant asserts that he has been residing in West Palm Beach, Florida since August 18, 1998. The applicant asserts that due to his illegal status, he has not been working, he has no driver's license, utility bills, leasing agreement or medical records. The applicant indicates that he has been supported financially by his sister.

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 of a 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 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.

The term *continuously physically present*, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The term *continuously resided*, as defined in 8 C.F.R. § 244.1, 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.

Persons applying for TPS offered to Haitians must demonstrate continuous residence in the United States since January 12, 2010, and continuous physical presence in the United States since January 21, 2010.

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. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Along with his TPS application, the applicant submitted: 1) his birth certificate with English translation; 2) a Form I-862, Notice to Appear, issued on September 13, 1999; 3) a Notice of Decision dated March 6, 2002 by the Director, Texas Service Center, regarding the denial of his Form I-765, Application for Employment Authorization, under [redacted] 4) a Form I-797C, Notice of Action, dated December 14, 2001, regarding his Form I-765; 5) an employment authorization card valid from February 10, 2001 to February 9, 2002; and 6) a Florida driver's license issued on November 28, 2001.

On June 16, 2010, the applicant was requested to submit evidence establishing his continuous residence since January 12, 2010 and continuous physical presence since January 21, 2010, in the United States. The applicant was also requested to submit evidence to establish his nationality. The applicant, in response, asserted that he has been residing in the United States since August 18, 1998 and after his employment authorization had expired he moved in with his sister who has financially supported him since that time. The applicant provided the following documentation:

- An affidavit from his sister, [redacted] who indicated that the applicant has been residing with her "for many years since became unemployed after the expiration of his employment authorization."
- A social security card.
- An additional copy of his birth certificate.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on July 28, 2010.

On appeal, the applicant submits a letter dated August 25, 2010, from the Consulate General of Haiti in Miami Florida, regarding the issuance of an identification card to the applicant.

The record reflects that the applicant's Form I-589, Application for Asylum and Withholding of Deportation, was filed on July 21, 1999. On March 28, 2000, a removal hearing was held and the applicant's application for asylum and withholding of removal was denied and he was ordered removed from the United States. The applicant appealed the IJ's decision to the Board of Immigration Appeals (BIA). On November 29, 2001, the BIA dismissed the applicant's appeal.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. As noted above, the sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). Casting doubt to the applicant's claim that he resided in the United States continuously since August 18, 1998, is the fact that the affidavit from the affiant does not provide detailed accounts of an ongoing association establishing a relationship under which the affiant could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavit from the affiant does not provide sufficient detail to establish that she had an ongoing relationship with the applicant that would permit her to know of the applicant's whereabouts and activities throughout the requisite periods.

Since the affidavit is seriously lacking in relevant detail, it lacks probative value and has only minimal weight as evidence of the applicant's eligibility for TPS. The applicant has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.