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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:  Office: NEBRASKA SERVICE CENTER

Date:
JAN 07 2011

IN RE: Applicant: 

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 Nebraska 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 Nebraska 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, Nebraska 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 she had continuously resided in the United States since January 12, 2010.

On appeal, the applicant acknowledges that she entered the United States on January 13, 2010. The applicant asserts that her J-1 visa expired on September 13, 2010, and requests that her application be reconsidered "based on the fact that I would have resided continuously in the United States before January 12th 2010 up to today were the courses provided to me in the USA."

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 her TPS application, the applicant submitted:

- A statement indicating she is a graduate student attending San Francisco State University and is enrolled in a two-year joint program between the university in the United States and a university [REDACTED] in France. The applicant asserted that she departed Haiti on September 27, 2008 to France.
- A copy of the biographical page of her Haitian passport.
- A copy of her Form I-94, Arrival-Departure Record, which reflected she was admitted into the United States on January 13, 2010, as a J-1 exchange visitor.

- A letter dated February 23, 2010, from the Director of Graduate Business Programs of [REDACTED] who indicated that the applicant began her MIB-BA dual degree program “in September, 2008 in Nice, France and she resided there until she came to San Francisco on January 13, 2010.”
- A letter dated March 19, 2010, from [REDACTED] France, who indicated that the applicant resided in her home in Nice, France from December 27, 2008, to January 13, 2010.
- The academic transcript from the University of [REDACTED], School of Business Administration for 2008 and 2009.
- Documentation dated March 9, 2010, from [REDACTED] regarding a graduate approved program/advancement to candidacy.
- A statement from Citibank for the period January 14, 2010 to February 19, 2010.

On June 15, 2010, the applicant was requested to submit evidence establishing her continuous residence since January 12, 2010 and continuous physical presence since January 21, 2010, in the United States. The applicant, in response, provided additional copies of the documents previously submitted along with:

- Unofficial college transcripts from San Francisco State University.
- Money order receipts.
- Bank statements.
- A receipt dated June 25, 2010, from the Social Security Administration indicating the applicant had applied for a social security card on the same date.
- Her temporary residence permit card issued in France along with several college documents from the University of Nice-Sophia Antipolis.
- Copies of pages of her passport reflecting entries into and departures from several countries.
- A copy of her U.S. visa which expired on May 2, 2006.
- Copies of her U.S. visas as a nonimmigrant visitor issued on October 24, 2006, and as a J-1 exchange visitor issued on December 22, 2009.

The director determined that the applicant had submitted sufficient evidence to establish continuous physical presence since January 21, 2010, but she failed to establish continuous residence since January 12, 2010. Accordingly, on August 13, 2010, the director denied the application.

The applicant's statements on appeal have been considered. However, the applicant was not residing in the United States on or before January 12, 2010. Therefore, she has failed to establish that she has met the criteria described in section 244(c)(1)(A)(ii) of the Act and the related regulation at 8 C.F.R. § 244.2 (c). The AAO is bound by the clear language of the regulation and statute and lacks the authority to change them. 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.