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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

PUBLIC COPY



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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

Applicant:



JAN 25 2011

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

On appeal, the applicant asserts that prior to her last entry on January 16, 2010, she was in the United States on July 17, 2009. The applicant asserts that she returned to Haiti due to emergent reasons. The applicant requests that due to the conditions in her native country, Haiti, her application be reconsidered and approved.

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).

Along with her TPS application, the applicant submitted a copy of the biographical page of her Haitian passport, her birth certificate with English translation and her U.S. visa, which was issued on December 21, 2009 in Port Au Prince, Haiti. The applicant also submitted a copy of her Form I-94, Arrival-Departure Record, which reflected she was admitted into the United States on January 17, 2010, as a nonimmigrant visitor.

On August 2, 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, asserted that she left Haiti on January 17, 2010 and entered the United States. The applicant provided the following documentation:

- A letter dated August 29, 2010, from [REDACTED] in Miami, Florida, who indicated that the applicant has been an active member of its church since January 24, 2010.
- Receipts from Miami-Dade County Public Schools dated from April 2010 to August 2010.
- A Certificate dated August 4, 2010 from [REDACTED] indicating the applicant had completed an English as a Second Language course.
- Additional copies of her Form I-94 and birth certificates of her U.S. born children.
- Western Union receipts dated April 19, 2010, May 19, 2010, and June 19, 2010.
- A receipt dated August 20, 2010.
- Documents written in the Creole language.

The director determined that the applicant had not established continuous residence in the United States since January 12, 2010, and denied the application on September 20, 2010.

On appeal, the applicant submits affidavits from individuals requesting that the applicant's TPS application be approved. The applicant submits a copy of her Haitian passport, which reflects that she was admitted into the United States on July 17, 2009. The applicant also submits additional copies of her children's birth certificate and several documents written in the Creole language. Any document containing foreign language submitted to the USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3).

The applicant does not provide the date she returned to Haiti and her passport does not reflect an entry stamp into Haiti. Her entry into the United States on July 17, 2009 was for visitation purposes only and the applicant has not provided any contemporaneous documents to establish continuous residence since that date.

The applicant's statements on appeal have been considered. However, the applicant has not provided any credible evidence to establish that she was continuously 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 statute and lacks the authority to change the statute. 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.