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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

M1



**JUL 11 2012**

DATE:

Office: NEBRASKA SERVICE CENTER

FILE:



IN RE:

Applicant:



APPLICATION:

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

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 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 continuously resided in the United States since January 12, 2011.

On appeal, the applicant asserts that he has “always lived in the United States, except that my residency has been interrupted by brief trips abroad beyond my control.”

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.

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.

On January 21, 2010, the Secretary designated Haiti as a country eligible for TPS. This designation allowed nationals of Haiti who have continuously resided in the United States since January 12, 2010, and who have been continuously physically present in the United States since January 21, 2010, to apply for TPS. On May 19, 2011, the Secretary announced an extension of

the TPS initial designation for Haiti until January 22, 2013. On May 19, 2011, the Secretary also re-designated Haiti for TPS eligibility which became effective on July 23, 2011, and remains in effect until January 22, 2013, upon the applicant's re-registration during the requisite time period. This re-designation allowed nationals of Haiti who have continuously resided in the United States since January 12, 2011, and who have been continuously physically present in the United States since July 23, 2011, to apply for TPS. The initial registration period for the new re-designation began on May 19, 2011, and ended on November 15, 2011.

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 applicant filed his TPS application on November 1, 2011. Along with his TPS application, the applicant submitted a copy of: 1) the biographical page of his Haitian passport; 2) his birth certificate without the required English translation<sup>1</sup>; 3) his Haitian identification card; 4) his Haitian driver's license issued on July 4, 2011; and 5) his Form I-94, Arrival-Departure Record, which reflected he was admitted into the United States on October 28, 2011, as a nonimmigrant visitor.

On January 3, 2012, the applicant was requested to submit evidence establishing his continuous residence since January 12, 2011 and continuous physical presence since July 23, 2011, in the United States. The applicant was informed that if he had a brief, casual, and innocent absence from the United States during this period, or a brief temporary trip abroad required by emergency or extenuating circumstances outside his control, he was to submit evidence to support the absence. The applicant, in response, provided the following:

- A statement dated February 6, 2012, from [REDACTED], who indicated that the applicant "rent a room in my basement at: [REDACTED] each time he comes to the US." The affiant indicated that on July 12, 2011,<sup>2</sup> the applicant came to the United States with his spouse. The affiant indicated that the applicant's spouse became ill and because they did not have health insurance, the applicant took his spouse back to Haiti on August 16, 2011. The affiant attested to the applicant's return to the United States on October 28, 2011.
- A medical certificate dated January 10, 2012, with English translation, from the director of the health center of [REDACTED] which indicated

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<sup>1</sup>Any document containing foreign language submitted to 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).

<sup>2</sup>The affiant inadvertently indicated the applicant came to the United States on July 12, 2012.

that the applicant had to travel to Haiti until October 20, 2011 to support his wife, who was suffering from cardiovascular disorders “considered at the stage of slightly high, the family does not have health insurance.”

- A letter dated November 7, 2011, and addressed to the applicant from [REDACTED] who thanked the applicant for being a guest at its church for the past two Sundays.
- [REDACTED]
- A copy of his spouse’s Form I-94, Arrival-Departure Record, which reflected she was admitted into the United States on July 12, 2011, as a nonimmigrant visitor.
- Copies of his Forms I-94, Arrival-Departure Record, which reflected he was admitted into the United States on November 11, 2008, June 13, 2009, June 3, 2010, July 12, 2011, and October 28, 2011, as a nonimmigrant visitor.
- A copy of his complete passport.

The director determined that the applicant’s absence from August 17, 2011 through October 28, 2011, met the definition of a brief trip abroad required by emergency or extenuating circumstances. The director, however, concluded that the applicant had not established the continuous residence requirement as he was not in the United States as of January 12, 2011. Accordingly, on February 15, 2012, the director denied the application.

On appeal, the applicant submits:

- An affidavit from [REDACTED] who indicated that he has been a co-worker of the applicant since June 2010 at [REDACTED] and [REDACTED] and he has remained a good friend of the applicant since that time. The affiant indicated that the applicant “has always continuously lived in the United States. His presence here has been physical, except when his residency is interrupted by emergency or extenuating circumstances that cause him to take brief trips abroad.”
- Medical documentation indicating that the applicant was seen by a nurse practitioner, [REDACTED] of [REDACTED]
- Medical documentation from [REDACTED] who indicated that the applicant was under her medical care during August and September 2010.

The affidavit from [REDACTED] has little probative value and raises questions to its authenticity as the applicant has not provided any evidence from [REDACTED] attesting to his employment. The applicant has not been continuously residing in the United

States since June 2010, as his passport reflects that he was admitted into Haiti on August 3, 2010; the applicant did not return to the United States until eleven months later.

The applicant's visit to the United States on June 3, 2010 only serves to establish that the applicant was present in the United States during the duration of his visit; it does not establish *continuous* residence in the United States.

The applicant's statements on appeal have been considered. However, the applicant's arrival into the United States on July 12, 2011, was subsequent to the eligibility period. Therefore, he 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). 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.