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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

DATE: **JUN 11 2012** Office: CALIFORNIA 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 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 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 with the California Service Center by filing a 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, California 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 she had: 1) continuously resided in the United States since January 12, 2011; and 2) been continuously physically present in the United States since July 23, 2011.

On appeal, the applicant asserts that she departed the United States on July 9, 2010, in order to take care of and support her mother who was residing in Santo Domingo, Dominican Republic due to the earthquake in Haiti.

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. 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 her TPS application on August 9, 2011.

Along with her TPS application, the applicant submitted copies of the biographical pages of her Haitian passport and her U.S. visa issued on January 25, 2010 in Nassau, Bahamas. The applicant also submitted a copy of her Form I-94, Arrival-Departure Record, which reflected she was admitted into the United States on February 17, 2010, as a nonimmigrant visitor. The visa page has entry stamps admitting the applicant into the United States on April 14, 2010, May 1, 2010 and June 4, 2010. The passport also contains entry stamps into Bahamas on February 20, 2010 and April 21, 2010, and entry and exit stamps into and from Dominican Republic in May 2010, June 2010, July 2010 and on February 16, 2011.

On November 21, 2011, the applicant was requested to submit evidence establishing her continuous residence since January 12, 2011 and continuous physical presence since July 23, 2011, in the United States. The applicant was informed that if she 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 her control, she was to submit evidence to support the absence. The applicant, in response, provided an additional copy of her passport along with:

- An undated letter from [REDACTED] who indicated that the applicant has been an active member of its church since February 2011.
- A statement dated December 31, 2011, from [REDACTED] of Lauderdale Lakes, Florida, who indicates that [s]he and the applicant have been friends for ten years.
- A copy of her September 18, 2009 marriage certificate from the Bahamas Registrar General's Department.

The director determined that the applicant had failed to submit sufficient evidence to establish continuous residence and continuous physical presence in the United States. Specifically, the director determined that [REDACTED] statement neither addressed the applicant's continuous residence nor her continuous physical presence in the United States and that her passport contained numerous entry and exit stamps since May 1, 2010. Accordingly, on January 30, 2012, the director denied the application as the applicant had failed to submit sufficient evidence to establish her eligibility for TPS.

The letter from [REDACTED] has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 244.9(a)(2)(v). Most importantly, the pastor does not explain the origin of the information to which he attests.

[REDACTED] failed to state the applicant's place of residence during the period in question, provide any details regarding the nature of their relationship with the applicant or the basis for their continuing awareness of the applicant's residence. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of the affiant's claim.

The applicant, on appeal, asserts that she departed the United States on July 9, 2010 to care for her mother. As evidence, the applicant provided a copy of her passport which indicated an entry stamp of July 9, 2010 into Dominican Republic. The applicant re-entered the United States on August 7, 2010, but departed again as USCIS records reflect that the applicant was admitted into the United States on February 16, 2011. USCIS records also reflect that the applicant departed the United States on June 15, 2011.

Based on USCIS records and the entry and exit stamps contained in her passport the applicant was not residing in the United States as of January 12, 2011. The applicant's arrival on February 16, 2011, into the United States was subsequent to the eligibility period. Further the applicant has not submitted evidence of her entry into the United States subsequent to her departure on June 15, 2011. Because the applicant has not credibly documented her travel history, she has not established continuous residence since January 12, 2011 and continuous physical presence in the United States since July 23, 2011 as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.