

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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DATE: Office: CALIFORNIA SERVICE CENTER  
OCT 19 2012

FILE: [Redacted]

IN RE: Applicant: [Redacted]

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.

Thank, you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

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

The applicant is a native and 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 it was determined that the applicant had failed to establish the requisite continuous residence and continuous physical presence in the United States.

On appeal, the applicant asserts that he has resided in the United States since December 2010 and he is eligible for TPS. The applicant submits additional evidence.

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 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.

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).

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 re-designation began on May 19, 2011, and ended on November 15, 2011.

The applicant filed his TPS application on June 27, 2011. The record includes evidence of the applicant's nationality, in the form of copies of his Haitian passport, birth certificate and photo identification card.

The issue in this proceeding is whether the applicant has submitted sufficient evidence to establish his continuous residence in the United States since prior to January 12, 2011, and his continuous physical presence since July 23, 2011.

The record includes the following:

- 1) A letter and an affidavit from [REDACTED] the applicant's [REDACTED]. In his letter, [REDACTED] states that the applicant has been living with him since the applicant's arrival in the United States. In his February 26, 2012 affidavit, [REDACTED] attests that the applicant came to the United States on December 15, 2010; that the applicant has been living with him; and, he attests to the applicant's quiet personality and to his character.
- 2) A letter from [REDACTED] stating that he knows through the applicant's cousin that the applicant arrived in Palm Beach County in the year 2010, after the devastation in Haiti.
- 3) An affidavit from [REDACTED], located at [REDACTED], Lantana, FL 33462. [REDACTED] attests that the applicant and his [REDACTED] a church member, have been attending the church since the applicant came to the United States; that the applicant visited the church on December 24, 2010 and has attended the church since that time; and, that the applicant contributes donations of \$30.00 per month.

- 4) A letter, dated March 1, 2012, from [REDACTED] [REDACTED], Lake Worth, FL [REDACTED] states that on January 7, 2011, he did an intake assessment of the applicant who reported experiencing stressors that affected his day to day functioning due to the aftermath of the Haitian earthquake of January 2010.

We find that cumulatively the record establishes the requisite continuous residence and continuous physical presence in the United States. The record contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any grounds that would bar the applicant from receiving TPS. The record contains sufficient evidence to establish the applicant's identity and nationality, his continuous residence in the United States since January 12, 2011, and evidence of his continuous physical presence in the United States from July 23, 2011, to the date of filing his application. Therefore, the director's decision will be withdrawn, and the application will be approved.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden.

**ORDER:** The director's denial of the application is withdrawn. The application is approved. The appeal is sustained.