

(b)(6)

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

DATE:

JAN 30 2013

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 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,

Ron M. Rosenberg
Acting 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 that she is eligible for late registration, and that she is eligible for TPS after November 15, 2011.

On appeal, the applicant asserts that she has submitted all evidence to establish eligibility for TPS status in the United States.

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 TPS 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.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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 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 first issue in this proceeding is whether the applicant is eligible for late registration.

The provisions for late registration were created in order to ensure that TPS benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations. To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above. If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

The initial registration period for Haiti under the re-designation period was from May 19, 2011 through November 15, 2011. The applicant filed her TPS application on December 23, 2011. Along with the application, the applicant submitted a copy of her Haitian passport bearing a United States B1/B2 nonimmigrant visa and contains arrival and departure stamps for travels to Bahamas, Haiti, and the United States in 2010 and 2011. The record contains a copy of a Form I-94, Arrival/Departure Form and a copy of a US-VISIT Arrival Departure Information System showing that the applicant last entered the United States on a B-2 nonimmigrant visa on November 26, 2011, with authorization to remain in the United States until May 25, 2012. It appears that the applicant has not left the United States since her last arrival on November 26, 2011. The US-VISIT also shows that on June 25, 2010, the applicant was admitted into the United States on a B-2 nonimmigrant visa, with authorization to remain in the United States through December 24, 2010, and that the applicant departed the United States on June 27, 2010.

The record of proceedings confirms that the applicant filed her TPS application, five (5) weeks after the initial registration period under the redesignation closed.

On May 2, 2012, the director sent a Request for Evidence (RFE) requesting the applicant to provide an explanation as to why she did not file for TPS during the initial registration period, evidence demonstrating that she is eligible for late registration and evidence of 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, submitted copies of documents previously submitted in the record.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on July 9, 2012. On appeal, the applicant asserts that she has submitted sufficient documentation to establish eligibility for TPS status in the United States.

The applicant has not submitted any evidence to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS will be affirmed.

The second issue in this proceeding is whether the applicant has established her continuous residence in the United States since January 12, 2011 and her continuous physical presence since July 23, 2011.

The applicant's statements on appeal have been considered. However, the applicant's last arrival into the United States was on November 26, 2011, subsequent to the eligibility period. Therefore, she cannot meet the criteria for continuous residence in the United States 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).

As indicated above, the record shows that the applicant entered the United States on June 25, 2010 and departed the United States on June 27, 2010. Her next entry into the United States was not until November 26, 2011. The record also shows that the applicant traveled on several occasions between Haiti and Bahamas during the period May, June, July and October 2011. Therefore, based on the evidence of record, the applicant had not continuously resided in the United States since January 12, 2011 and was not continuously physically present in the United States since July 23, 2011. Consequently, the director's decision to deny the application for TPS will be affirmed.

The applicant has not submitted sufficient credible evidence to establish her qualifying continuous residence in the United States since January 12, 2011, and her continuous physical presence in the United States since July 23, 2011. The applicant has, therefore, failed to establish that she has met the criteria 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.

Accordingly, the applicant has failed to establish her qualifying residence and physical presence in the United States during the re-designation period and has failed to establish her eligibility for late registration under the initial designation or the re-designation periods for TPS for Haiti. Consequently, the director's decision to deny 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.