U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: SEP 19 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The re-registration 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 re-registration application because the applicant's initial TPS application ( ) had been denied on February 21, 2012,[1] and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant asserts, in pertinent part:

> I came to South Florida on October 15th, 2010 later on I moved to Atlanta Georgia with my close friends who provided me with food and shelter. In early 2011 I applied for deferred action, and on July 5th, 2011 I received a letter from U.S. Citizenship and Immigration Services requesting me to apply for Temporary Protected Status which I did.

The applicant states that he is submitting evidence to establish his residence in the United States since October 15, 2010.

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

[1]The director denied the initial application after determining that the applicant had abandoned his application by failing to respond to a Request for Evidence. No motion was filed from the denial of that application.

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 re-designated Haiti for TPS eligibility which became effective on July 23, 2011. 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. On October 1, 2012, the Secretary announced an extension of the TPS designation for Haiti until July 22, 2014, upon the applicant's re-registration during the requisite time period.

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 indicates on appeal, "I received my approval letter from U.S. Department of Homeland Security in Form I-797 receipt ."

The applicant incorrectly attributes the granting of employment authorization as approval of his TPS application. The fact that the applicant was granted employment authorization is not evidence that he was approved TPS. Based upon filing of the Form I-821 application for TPS, an applicant is afforded temporary treatment benefits and is issued employment authorization upon establishing *prima facie* eligibility[2] for TPS pursuant to 8 C.F.R. § 244.5(b). As provided in 8 C.F.R. § 244.13(a), temporary treatment benefits terminate upon a final determination with respect to the alien's eligibility for TPS.

On appeal, the applicant submits:

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[2] Pursuant to 8 C.F.R. § 244.1, *prima facie* means eligibility established with the filing of a completed application for TPS containing factual information that if unrebutted will establish a claim of eligibility under section 244 of the Act.

- Copies of Notices of Action (Forms I-797 and I-797C) dated June 27, 2011 through February 5, 2013.
- Documentation dated July 5, 2011, regarding the applicant's interest in deferred action.
- A fingerprint scheduling notice dated June 21, 2011.
- Copy of his Form I-94, Arrival/Departure Record, which indicates that he was admitted into the United States as a nonimmigrant visitor on October 15, 2010.
- A copy of his Haitian passport.
- Employment authorization card valid from October 25, 2011.

As the applicant claims to have lived in the United States since October 15, 2010, it is reasonable to expect that he would have some type of contemporaneous evidence to support his claim. However, he has not submitted any of the documents suggested in the Request for Evidence of October 27, 2011.[3] Although the applicant has presented copies of notices issued by USCIS, they alone do not establish the applicant's continuous residence and continuous physical presence in the United States during the qualifying periods.

The applicant claims that subsequent to his entry on October 15, 2010, he "moved to Atlanta, Georgia with my close friends who provided me with food and shelter." The applicant has not provided any corroborating evidence to support this statement. Furthermore, this statement contradicts the letter provided with his initial TPS application from Reverend of in Belle Glade, Florida, who indicated that his church had provided food, clothing and shelter to the applicant.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant's statements on appeal have been considered. However, the documents submitted on appeal do not establish 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). In this case, the applicant is not a current TPS registrant. Therefore, he is not eligible to re-register for TPS. Consequently, the director's decision to deny the re-registration 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.

[3] The notice was sent to the applicant prior to the issuance of the denial of his initial application.