

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



M₁

FILE:  Office: CALIFORNIA SERVICE CENTER

Date:

DEC 13 2010

IN RE: Applicant: 

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

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the California Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 (AAO) 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, 2010; and 2) been continuously physically present in the United States since January 21, 2010.

On appeal, the applicant asserts that she has never departed the United States since her first arrival. The applicant submits additional documents in an attempt to establish continuous residence and continuous physical presence during the requisite periods.

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 Temporary Protected Status 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.

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.

Persons applying for TPS offered to Haitians must demonstrate continuous residence in the United States since January 12, 2010, and continuous physical presence in the United States since January 21, 2010.

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 AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reflects that the applicant's Form I-589, Application for Asylum and Withholding of Deportation, was filed on May 23, 2005. A Form I-862, Notice to Appear, was issued and served on the applicant on September 30, 2005. On July 20, 2007, a removal hearing was held and the applicant's asylum application was denied and she was granted voluntary departure from the United States on or before November 19, 2007.

Along with her TPS application, the applicant submitted: 1) a copy of her Haitian passport issued on November 8, 2007; 2) her Haitian identification card issued on September 17, 2004; 3) her U.S. Virgin Islands identification card; 4) her birth certificate with English translation; 5) her marriage certificate which indicates she was married in [REDACTED]

2006; 6) a Form I-797C, Notice of Action, dated June 15, 2007, regarding a Form I-130, Immigrant Petition for Relative, filed on her behalf; 7) a Form I-797C, Notice of Action, dated February 1, 2006, regarding a Form I-765, Application for Employment Authorization; 8) her Forms I-765 dated October 28, 2005 and March 25, 2010; 9) documents relating to her asylum application and removal proceedings; 10) the biographical pages of her spouse's and daughter's U.S. passports; and 11) the birth certificate for her child who was born on May 8, 2006, in Florida.

On June 30, 2010, the applicant was requested to submit evidence establishing her continuous residence since January 12, 2010 and continuous physical presence since January 21, 2010, in the United States. The applicant, in response, provided additional copies of the documents previously submitted along with the following:

- A copy of an oral decision of the immigration judge dated January 31, 2007.
- A copy of a ticket from [REDACTED] purchased on November 8, 2007. The ticket, which lists the applicant's name, reflects that on November 16, 2007, the bus departed Albany, New York to Montreal, Canada.
- A copy of a ticket receipt from Greyhound Lines, Inc., purchased on November 16, 2007. The receipt, which lists the applicant's name, reflects the travel itinerary from New York to Fort Pierce, Florida from November 16, 2007, to November 17, 2007.
- A copy of a Form I-797 regarding her Form I-589.

The director determined that the applicant was in Haiti on November 8, 2007, because her passport was issued in Port Au Prince, and the applicant then returned to the United States between November 8, 2007, and November 16, 2007. The director determined that based on the bus tickets from Greyhound Lines, the applicant departed from [REDACTED] November 16, 2007 to Montreal, Canada because "she, herself, highlighted that particular ticket out of the travel records she submitted." The director determined that the applicant had failed to submit any evidence to establish continuous residence in the United States from the latter part of 2007 to the present. The director concluded that the applicant had failed to establish continuous residence in the United States since January 12, 2010 and continuous physical presence in the United States since January 21, 2010. Accordingly, on August 18, 2010, the director denied the application.

The applicant, on appeal asserts, in pertinent part:

Regarding the new passport, it was issued in Haiti before I came to the US in 2004; as I lost my passport here, I went to the Haitian Consulate in Orlando to have another one issued to me, in order to travel to Canada, they requested a police report stating that my passport was lost. That is how I did have another one issued to me. It was issued with the same number and also for the time remaining on the one I lost.

The applicant submits an undated letter from [REDACTED] who indicated that the applicant has been a member of the church since 2005. This letter, however, has little probative value and evidentiary weight 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.

The applicant also submits an incident report dated October 31, 2007, from the Fort Pierce Police Department regarding her misplaced Haitian passport.

Regarding the Greyhound bus ticket, the applicant, on appeal, asserts, in pertinent part:

I never departed the US since the first day I came here. Yes, I submitted copy of a Greyhound Lines tickets with my TPS application due to the fact I was granted voluntary departure by an immigration judge and I did buy the tickets to travel to Canada with my daughter to avoid deportation; but, as I did not have any Canadian visa issued to me, I had no other choice to return from Albany, NY to Fort Pierce with my daughter on November 16, 2007.

The applicant's rebuttal on appeal regarding her passport and bus tickets is plausible. Nevertheless, there is not sufficient evidence in the record to establish that the applicant had continuously resided in the United States since January 12, 2010, and had been continuously physically present since January 21, 2010. Except for the letter from the church, which lacks probative value, the applicant provides no other evidence to substantiate her residence and physical presence in the United States during the requisite periods. The applicant has, thereby, 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 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.