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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

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date:

NOV 26 2010

IN RE: Applicant: [REDACTED]

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. The fee for a Form I-290B is \$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 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 arrived in Miami, Florida on January 20, 2010. The applicant asserts that she would suffer exceptional and extremely unusual hardship if she is ordered to return to Haiti. The applicant states that the “evidences presented sufficiently satisfy the high standard of hardship required.”

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 applicant indicated on her TPS application that she entered the United States with a visitor visa on January 28, 2010. The applicant indicated that in July 2002, she traveled to the Cayman Islands and was hired by a Cayman citizen as a home care attendant. The applicant asserted that she obtained her U.S. visa through the consulate in Jamaica.¹ In December 2009, she was informed by the government officials of the Cayman Islands that she had to leave the island by May 15, 2010, as her work permit will expired on May 18, 2010. The applicant asserted that on January 11, 2010, she departed the Cayman Islands to Haiti on January 11, 2010, on a connecting flight to the United

¹ The U.S. Embassy in Kingston Jamaica has consular responsibility for the Cayman Islands. See http://travel.state.gov/travel/cis_pa_tw/cis/cis_1084.html.

States. After the earthquake on January 12, 2010, she departed Haiti to come to the United States seeking assistance.

U.S. Citizenship and Immigration Services records reflect that the applicant entered the United States with a B-2 visa on January 11, 2010, in transit to Haiti, and again with a B-2 visa on January 28, 2010. At the time of each entry, the applicant indicated the Cayman Islands as her country of residence.

On May 20, 2010, a notice was issued requesting the applicant to provide her addresses for three years prior to her entry into the United States. The applicant was informed that if she has resided in another country other than Haiti prior to entering the United States, she was to provide an explanation of her immigration status in that country; whether she had lawful permission to be in that country; whether her permission was temporary or permanent; her reasons for being in that country; the reason for leaving; whether she was a refugee from another country; whether she had the same privileges provided to other persons who lived permanently in the country; and reasons why she did not consider herself to have been firmly resettled in the country other than Haiti before entering the United States.

The applicant was also 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, submitted: 1) copies of her Haitian passports; 2) copies of her work permits issued by the government of the Cayman Islands; 3) a copy of her debit card issued by Bank of America; an insurance card from British-American Insurance Company Limited; 4) a copy of her Cayman Islands drivers license issued on April 20, 2009; 5) a copy of a temporary driving permit in Florida issued on May 21, 2010; 6) a bank statement from Bank of America issued in May 2010; 7) a hotel receipt from Days Inn dated August 22, 2009; and 8) a Certificate of Occupational Proficiency dated May 26, 2010.

The director determined that the applicant had not established continuous residence in the United States since January 12, 2010 and continuous physical presence in the United States since January 21, 2010. Accordingly, on July 16, 2010, the director denied the application.

The applicant's statements on appeal have been considered. However, the applicant arrived in the United States subsequent to the eligibility period. Therefore, she cannot meet the criteria for continuous residence in the United States since January 12, 2010 and continuous physical presence in the United States since January 21, 2010 as 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.