

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**



M

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Applicant: [Redacted]

SEP 23 2010

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 \$585. 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: 1) establish continuous residence in the United States since January 12, 2010; 2) establish he had been continuously physically present in the United States since January 21, 2010.; 3) submit the court disposition of his arrest; and 4) submit a Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant asserts that he did not submit the Form I-601 due to lack of funds. The applicant states that due to the earthquake in Haiti, it is impossible for him to obtain his birth certificate. The applicant submits copies of documents that were previously provided. The applicant indicates at item 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.<sup>1</sup> However, more two months later, no additional correspondence has been presented by the applicant.

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

---

<sup>1</sup> Every appeal submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. 8 C.F.R. § 103.2(a)(1). The Form I-290B instructs the applicant to submit a brief and additional evidence to the AAO within 30 days of filing the appeal.

- (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 first and second issues to be addressed are the applicant's identity and criminal history.

On March 26, 2010, the applicant was requested to submit evidence to establish his identity and the final court disposition of his arrest on [REDACTED], for petit larceny.

In her Notice of Decision dated May 21, 2010, the director noted that as of the date of the decision, no response had been received. The record, however, reflects that the applicant submitted a response which was received on May 18, 2010. The applicant's response will be considered on appeal.

In response, the applicant submitted a copy of his Haitian passport and Florida driver license.<sup>2</sup> The applicant also submitted court documentation from the Miami-Dade County Circuit Court, which reflects that on August 23, 2005, adjudication of guilt was withheld and the applicant was placed on probation for violating Florida statute 812.014(3)(a), petit larceny. Case no. [REDACTED]

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Immigration and Nationality Act.

The court disposition submitted reflects that the judge ordered some form of a restraint on the applicant's liberty. Therefore, the applicant has been convicted of one misdemeanor for immigration purposes.

The applicant has overcome the basis for denial of his TPS application with regard to his criminal history and his identity. Therefore, the director's findings on these issues will be withdrawn.

The third and fourth issues to be addressed are whether the applicant has established continuous residence and continuous physical presence in the United States during the requisite periods.

On March 26, 2010, the applicant was requested to submit evidence establishing his continuous residence since January 12, 2010 and continuous physical presence since January 21, 2010, in the United States.

Although the applicant submitted a response on May 18, 2010, he failed to submit any evidence to establish continuous residence since January 12, 2010, and his continuous physical presence since January 21, 2010 in the United States. The applicant, on appeal, did not present any evidence to establish his continuous residence and continuous physical presence in the United States.

The applicant has not submitted any evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the requisite periods. He has, thereby, failed to establish that he 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 issues will be affirmed.

---

<sup>2</sup> The record contains a copy of the applicant's birth certificate with an English translation that was provided under another proceeding.

The fifth issue to be addressed is the applicant's inadmissibility.

The record reflects that on June 16, 1993, the applicant applied for admission into the United States by presenting a fraudulent Haitian passport. The applicant was found inadmissible under section 212(a)(6)(C)(i) of the Act. However, such ground of inadmissibility may be waived pursuant to section 244(c)(2) of the Act.

On March 26, 2010, the applicant was provided the opportunity to file a Form I-601 with appropriate fee or fee waiver. The applicant, however, failed to submit the waiver application.

To date, the applicant has not filed the required Form I-601. Therefore the applicant remains inadmissible. Consequently, the director's decision to deny the application for TPS on this issue will also 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.