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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

M₁

[REDACTED]

FILE: [REDACTED]
[LIN 10 902 49046]

Office: NEBRASKA SERVICE CENTER

Date: APR 04 2011

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:

[REDACTED]

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 Nebraska 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 Nebraska 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, Nebraska 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 he had: 1) continuously resided in the United States since January 12, 2010.

On appeal, counsel asserts that even though more than 30 documents were submitted, the director determined that the applicant did not submit any documents that established continuous residency. Counsel argues that the director “cherry-picks one or two document and ignores all the other evidence we submitted.” Counsel asserts that the applicant did not enter the United States on January 15, 2010 with a B-2 visa as he and his child were airlifted out of Haiti by the U.S. Government. Counsel asserts that the applicant has been residing in the United States before January 12, 2010, as he has been taking care of his children 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 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).

Along with his TPS application, the applicant submitted a statement indicating that he has been residing in the United States since his daughter was born on May 6, 2008. The applicant asserted on December 29, 2009, that he and his daughter traveled to Haiti for a brief and casual visit, and were airlifted back to the United States by the U.S. military. The applicant asserted that he returned to his residence, [REDACTED], and has not departed the United States since then. The applicant stated, "I also lived at a different address in 2009, during which time I received health care services (paid by me) at Suffolk City Dept. of Health Services and also attended ABE/ASE/ES: education courses at Eastern Suffolk VOCES." The applicant submitted:

- A copy of his Haitian passport and the biographical page of his U.S. visa issued on September 7, 2006, in Port Au Prince, Haiti.

- Copies of three American Airlines boarding passes addressed in the names of the applicant and his two children dated January 15, 2010, for travel from Miami to New York.
- An Emergency Loan Application and Evacuation Documentation from the U.S. Department of State dated January 15, 2010.
- A letter dated March 7, 2010, from [REDACTED] who indicated that the applicant has been attending the church for almost two years, and that in August 2008, the applicant brought his daughter before the church to be dedicated to God.
- A May 6, 2008 birth certificate and U.S. passport for [REDACTED] and an Acknowledgement of Paternity document signed by the applicant on March 25, 2010.
- A statement dated February 21, 2010, from [REDACTED] who indicated that she resides at [REDACTED] and that the applicant "rented my apartment and has been paying me 800 dollars every month."
- A bank statement dated March 15, 2010 from Chase.
- Billing statements from Suffolk County Department of Health Services of New York dated December 29, 2009 and February 1, 2010.
- A receipt for payment dated February 23, 2010, from Suffolk County Department of Health Service of New York.
- An envelope postmarked July 1, 2009 from Eastern Suffolk BOCES addressed to [REDACTED]
- A letter dated July 1, 2009, from East Suffolk BOCES addressed to "student" regarding Literacy ABE/ASE/ESL day classes starting on July 7, 2009.
- A library card from Brentwood Public Library.
- A pharmacy card from Rite Aid.
- A Form I-797C, Notice of Action, dated October 1, 2009, regarding a Form I-130, Petition for Alien Relative, filed on behalf of the applicant.

On June 21, 2010, the applicant was requested to submit evidence establishing his continuous residence since January 12, 2010 and continuous physical presence in the United States since January 21, 2010, to the date of filing. The applicant was informed that if he 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 his control, he was to submit evidence to support the absence.

The applicant, in response, asserted that he has been continuously residing in the United States prior to January 12, 2010, and that he traveled to Haiti on December 29, 2009 for a brief, casual and innocent trip. The applicant provided additional copies of the documents that were previously submitted along with:

- A letter dated January 20, 2010, from DNA Diagnostics Center regarding a paternity test for two children.

- An additional letter dated July 16, 2010, from [REDACTED] who indicated that she received payment for February rent before the applicant's lease had expired (February 2009 to March 1, 2010).
- Envelopes postmarked April 20, 2010, May 19, 2010, and June 29, 2010, from Brentwood Public Library, Martin Luther King, Jr. Community Health Center, and Eastern Suffolk BOCES, respectively.
- A letter dated May 19, 2010, and addressed to the applicant from the Martin Luther King, Jr. Community Health Center.
- Documentation relating to the filing of his TPS application.
- A letter dated June 29, 2010, addressed to "student" from East Suffolk BOCES regarding Literacy ABE/ASE/ESL day classes starting on July 6, 2010.
- A bank statement dated July 16, 2010, from Chase.
- Cellular phone receipts from Metro PCS dated May 21, 2010, June 23, 2010 and July 22, 2010.
- A statement from [REDACTED] who attested that the applicant has resided at [REDACTED] since March 2010.
- An additional letter dated July 18, 2010, from [REDACTED] who indicated that the applicant has been attending the church for almost two years, and that in August 2008, the applicant brought his daughter before the church to be dedicated to God. The affiant indicated that the applicant departed the United States just before the New Year to attend to a family matter in Haiti.
- An affidavit from [REDACTED] who indicated that he has known the applicant for two years and attested to the applicant's departure to Haiti in December 2009 with the applicant's two children.
- A statement dated July 11, 2010, from [REDACTED] who indicated that on January 14, 2010, she, the applicant and his two children went to the U.S. Embassy in order to leave Haiti. The affiant asserted that they flew on a military plane to Miami, Florida and that their passports were not stamped.
- A statement dated July 15, 2010, from [REDACTED] who indicated that she met the applicant three years ago at the Seventh-Day Adventist Church in Brentwood, New York. The affiant indicated that the applicant went to Haiti in December 2009 and returned to the United States on January 15, 2010.
- An undated statement from [REDACTED] who indicated that he met the applicant in the summer of 2008 at the Canaan Seventh-Day Adventist Church in Brentwood, New York. The affiant asserted that through church activities, he has come to know and respect the applicant, and sees the applicant almost every Saturday. The affiant indicated that he was in Haiti in December 2009 and picked up the applicant at the airport.

The director, in denying the application, on September 3, 2010, noted, in pertinent part:

In response, you submitted a bill from the Suffolk County Department of Health Services, with a statement date of 12/29/09. However, it does not indicate any additional information about the services provided and to who. [REDACTED] receiving a

bill at an address within the U.S. does not substantiate a residence. In addition, the letter you submitted from [REDACTED] indicates you agreed to a one year lease, however, you did not provide a lease agreement or any utility bills for the residence. In another letter dated March 7, 2010, from [REDACTED] he indicated you were present in August of 2008 for the baptism of your daughter [REDACTED] however, service records indicate you entered the U.S. on August 15, 2008 and departed on September 8, 2008. In addition, service records indicate you have made several entries to the U.S. and that you only stayed for approximately two weeks to two months. Several short visits to the U.S. under a valid B-2 nonimmigrant visa, and merely being present in the U.S., does not meet the requirement of continuous residence.

The director determined that the applicant had not established continuous residence in the United States since January 12, 2010. The director also determined that the applicant's failure to maintain continuous residence was not due to brief, casual and innocent absence or a brief temporary trip abroad required by emergency or extenuating circumstances beyond his control.

USCIS records reflect that the applicant entered and departed the United States in 2008 and 2009 with a B-2 visa as follows:

<u>Entered</u>	<u>Departed</u>
March 18, 2008	March 31, 2008
August 15, 2008	September 8, 2008
November 27, 2008	February 1, 2009
April 7, 2009	May 10, 2009
July 8, 2009	September 13, 2009
October 6, 2009	December 29, 2009

On appeal, counsel submits additional copies of the documents previously provided along with documents that only establish the applicant's continuous physical presence in the United States since January 21, 2010.

As noted above, the sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. Casting doubt on the applicant's claim that he resided in the United States continuously since the birth of his daughter on May 6, 2008 is that the evidence submitted lacks credibility. Specifically:

1. The letters from [REDACTED] have little evidentiary weight or probative value as they do 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.
2. The letters from [REDACTED] raise questions to their authenticity as no evidence such as a lease agreement or utility bills have been submitted to support the affiant's assertion. Furthermore, the applicant claimed to have lived at a different

address in 2009 and USCIS records reflect that the applicant departed the United States on February 1, 2009, and the first of his three reentries was on April 7, 2009.

3. Considering the length of time the affiants claim to have known the applicant – in most cases since 2008 – the affiants provide remarkably few details about the applicant's life in the United States, such as where he worked and their interaction with him over the years. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence seriously detracts from the credibility of his claim.
4. The documents from Suffolk County Department of Health Services do not support the applicant's claim that *during 2009* he received health care services.
5. The letter dated July 1, 2009, from Eastern Suffolk BOCES regarding the Literacy ABE/ASE/ESL day classes starting July 7, 2009, lacks probative value and evidentiary weight as no evidence of continual attendance was submitted to support this letter.

These factors tend to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of continuous residence in the United States since May 2008. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence in the United States for requisite period.

Doubt cast on any aspect of the evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Given the credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met his burden of proof. The applicant has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(c). The AAO is bound by the clear language of the statute and lacks the authority to change the statute. 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.