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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

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**U.S. Citizenship  
and Immigration  
Services**



MA

DATE: DEC 30 2011 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 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 he 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 he arrived in St. Thomas on October 19, 2009. The applicant asserts that he began working two days a week for [REDACTED] on December 20, 2009. The applicant submits additional documentation in an attempt to establish continuous residence and continuous physical presence in the United States 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.

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.

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.

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 filed a Form I-589, Application for Asylum and Withholding of Removal, on April 16, 2010. On the Form I-589, the applicant indicated that on October 19, 2009, he entered St. Thomas without inspection. The applicant listed his residence in [REDACTED]. The applicant listed no employment on the Form I-589. On June 8, 2010, a Form I-862, Notice to Appear, was issued and served on the applicant on June 17, 2010. On October 18, 2010, the case was administratively closed to allow the applicant the opportunity to apply for TPS.<sup>1</sup>

On November 17, 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. The applicant, in response, provided a Form I-797C, Notice of Action, dated September 30, 2010, regarding his ASC appointment notice on October 14, 2010, and a rent receipt dated November 1, 2010.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on February 17, 2011.

On appeal, the applicant submits:

- A statement dated March 11, 2011, from [REDACTED] Islands, who indicated that [s]he is the owner of [REDACTED] and that the applicant has been employed since December 2009. The affiant indicated that the applicant worked two to three days a week.
- Two pay stubs dated October 27, 2009, and March 29, 2010.
- An undated pay stub.

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<sup>1</sup> Administrative closing of a case does not result in a final order. It is merely an administrative convenience which allows the removal of cases from the calendar in appropriate situations. *See Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996).

The statement from [REDACTED] letter has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide the address where the applicant resides during the period of his employment, and the employment duties of the applicant.

Further, these documents raise questions to their authenticity as the applicant did not claim any employment on his Form I-589. The applicant claims to have lived in the United States since October 2009 and, therefore, it is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his claim of residence; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b).

The applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous residence and continuous physical presence 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.