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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

[Redacted]

M₁

FILE:

[Redacted]

Office: NEBRASKA SERVICE CENTER

Date:

FEB 08 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: 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 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 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 on January 8, 2010, he departed the United States on a temporary trip to Haiti. The applicant asserts that his grandmother had passed away and he organized and attended her funeral. The applicant submits an excerpt from the death certificate of [REDACTED] with English translation. The excerpt, which lists the applicant's name, indicates that Ms. Ceron passed away on January 3, 2010.

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: 1) a copy of the biographical page of his Haitian passport; 2) his birth certificate with English translation; 3) his U.S. visa issued on April 26, 2005, in Port Au Prince, Haiti; 4) a Notice of Action dated January 29, 2010, regarding a Form I-130, Petition for Alien Relative, filed on the applicant's behalf; and 5) a copy of his Form I-94, Arrival-Departure Record, which reflected he was admitted into the United States on February 16, 2010, as a nonimmigrant visitor.

USCIS records reflect that the applicant was also admitted into the United States on August 12, 2005, August 12, 2006, August 15 and 26, 2007, July 30, 2008, July 23, 2009, and December 25, 2009. The applicant departed the United States on August 26, 2005, September 4, 2006, August 30, 2007, August 15, 2008, August 25, 2009, and January 8, 2010.

On August 6, 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 the following documentation:

- A letter dated August 12, 2010, from the pastor [REDACTED] and the church administrator [REDACTED] of [REDACTED] in Philadelphia, Pennsylvania, who indicated that the applicant has been a consistent member of the church since December 27, 2009.
- An affidavit from [REDACTED], who indicated she met the applicant while visiting in Haiti and he used to be her neighbor. The affiant attested to the applicant's moral character.
- An affidavit from [REDACTED] who indicated that the applicant is her husband and has been residing in the United States since December 25, 2009.
- An additional copy of his passport.

The director, in reviewing the evidence, determined that the evidence established that the applicant had brief visits to the United States prior to his admittance on February 16, 2010, and that no evidence was submitted to suggest the applicant had a brief, casual and innocent absence from the United States. On September 7, 2010, the director denied the application.

On appeal, the applicant submits an additional copy of his passport and a copy of an e-ticket receipt from American Airlines.

The applicant, on appeal, asserts that he planned to return to the United States "the following week of January 8, 2010." The applicant, however, has not provided any credible evidence such as an airline reservation to support this assertion. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The e-ticket receipt from American Airlines only listed the applicant's itinerary from New York to Miami and from Miami to Port Au Prince.

The letter from [REDACTED] has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 244.6(v). Most importantly, the affiants do not explain the origin of the information to which they attest.

The affidavit from [REDACTED] raises questions to its credibility as the applicant, in filing her TPS application, indicated that she was divorced from the applicant on February 14, 2009, and submitted a divorce certificate as evidence.

Doubt cast on any aspect of an applicant's proof 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant has not submitted sufficient credible 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 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.