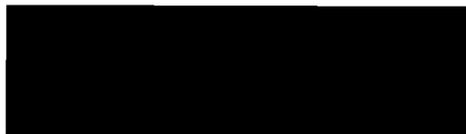


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



M<sub>1</sub>

FILE:



Office: NEBRASKA SERVICE CENTER

Date:

FEB 23 2011

IN RE:

Applicant:



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 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, “[t]he earthquake hit when I was in Haiti on January 12, 2010 where I was caring for my sick mother, I couldn’t come back until February 2010.” The applicant asserts that Boston Medical Center has remained her primary care site since January 2007. The applicant requests that her application be reconsidered and approved. The applicant submits additional copies of the documents that were previously provided.

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).

At Part 4 of the TPS application, the applicant indicated that she has been residing in the United States since August 13, 2009. Along with her TPS application, the applicant submitted: 1) a copy of the biographical page of her Haitian passport issued on March 24, 2009; 2) a copy of her birth certificate without the required English translation<sup>1</sup>; 3) a copy of her Form I-94, Arrival-Departure Record, which reflects she was admitted into the United States on February 4, 2010, as a

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<sup>1</sup> Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3).

nonimmigrant visitor; 4) a birth certificate for her daughter, who was born on February 13, 2007, in Boston, Massachusetts; 5) a birth certificate registration dated April 12, 2010, from Boston Medical, indicating that another daughter was born at Boston Medical Center on April 10, 2010; 6) a letter dated May 26, 2010, from a representative at Boston Medical Center - Yawkey Ambulatory Care Center indicating the applicant has been a patient at the obstetrics/gynecology associates since January 2007; and 7) a letter dated April 8, 2010, from a representative of Rosie's Place in Boston, Massachusetts, who indicated that the applicant is a guest and is receiving advocacy from its staff.

On July 13, 2010, the applicant was 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, provided the following documentation:

- Additional copies of her Form I-94, her daughter's birth certificate and the letter from the Boston Medical Center obstetrics/gynecology associates.
- An additional copy of the biographical page of her passport along with pages reflecting exit stamps from Haiti on August 13, 2009 and February 2, 2010; an entry stamp into Haiti on September 11, 2009; an entry stamp into the Dominican Republic on February 2, 2010; and an entry stamp into the United States on August 13, 2009.
- Copies of money order receipts dated May 22, 2010.
- A copy of her U.S. visitor visa issued in Port Au Prince, Haiti on November 28, 2006.
- A copy of a birth certificate for her daughter who was born on April 10, 2010.
- Copies of her children's social security cards.

The director determined that the children's birth certificates only served to establish that the applicant was in the United States in February 2007 and April 2010; they did not establish continuous residence and continuous physical presence during the requisite periods. The director determined that based on the entry and exit stamps in her passport, the applicant entered the United States on August 13, 2009, and returned to Haiti on September 11, 2009, where she remained until February 2, 2010. The director determined that the applicant had not established continuous residence in the United States since January 12, 2010 and continuous physical presence since January 21, 2010. The director also determined that the applicant's failure to maintain continuous physical presence and residence was not due to brief, casual and innocent absence or a brief temporary trip abroad required by emergency or extenuating circumstances beyond her control. Accordingly, on August 18, 2010, the director denied the application.

On appeal, the applicant submits copies of the documents that were previously provided and considered by the director. The applicant also submits:

- A copy of her daughter's immunization record reflecting vaccinations given from February 2007 through December 18, 2008.

- A letter dated August 31, 2010 from a representative [REDACTED], who indicated that the applicant had enrolled in a Home Health Aide/Nursing Assistant program with the entrance date of September 21, 2010.
- A letter dated September 16, 2010, from a teacher congratulating the applicant on completing an English as a Second Language program during the 2010 summer session.

These documents, however, do not serve to establish continuous residence in the United States since January 12, 2010, and continuous physical presence since January 21, 2010. 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). 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.