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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**

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[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date:

JAN 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: 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 that she departed the United States on December 12, 2009, to visit her husband in Haiti. The applicant requests that her application be reconsidered and approved.

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 her TPS application, the applicant submitted a copy of her Haitian passport and a biographical page of her U.S. visa issued on November 15, 2007. USCIS records reflect that the applicant was admitted into the United States on December 23, 2007, December 31, 2008, September 12, 2009, and February 20, 2010. The applicant departed the United States on January 5, 2008, May 24, 2009, and December 12, 2009.

The applicant also submitted her daughter's birth certificate who was born in Danbury, Connecticut on March 16, 2009, and billing statements for services rendered on October 3, 2009, and November 24, 2009, from the Westchester Medical Center in Hawthorne, New York and Emergency Medical Associates Westchester, respectively.

The director determined that based on her February 20, 2010, entry into the United States, the applicant had failed to maintain continuous residence and continuous physical presence in the

United States during the requisite periods. Accordingly, the director denied the application on July 30, 2010.

On appeal, the applicant asserts that she returned to the United States in September 2009, due to her daughter's medical condition. The applicant asserts, in pertinent part:

As Christmas was approaching and my husband had already used all his vacation days from work, he asked me if we could come home for Christmas. I talked this over with [her daughter's] Doctor and he said we could go but should not stay in Haiti for too long because [the daughter] had to be seen in 6 weeks the most. The Doctor gave me medicine for the 6 weeks we would be gone. I left the U.S. on December 12, 2009 and on January 12, 2010 the earthquake.

Since the living conditions in Haiti were inhumane in the dates after the earthquake and our daughter was almost due back to the hospital, I had my mother and my dad take her to the U.S. Embassy in Haiti and, surprisingly, they allowed my mother to leave with our daughter. My husband and I had to stay in Haiti a little bit longer because we had to find a shelter, food and other basic things for our parents and some relatives.

I understand it may seem like my last trip to Haiti was merely a casual trip home but it was not at all. I can not imagine being illegal in this country but I sure didn't plan on living back home especially after my daughter was diagnosed with Pulmonary Tuberculosis.

The applicant, however, has not provided any evidence to support her claim that the doctor had indicated that her daughter "had to be seen in 6 weeks the most." 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 billing statements alone are not sufficient evidence to establish continuous residence and continuous physical presence.

On appeal, the applicant submits a letter dated August 10, 2010, from a representative of Danbury Hospital in Connecticut, who indicated that the applicant's daughter has been a patient at the hospital since birth and that she has been diagnosed recently to have pulmonary tuberculosis and is undergoing treatment with multiple medications.

The letter, however, has little probative value as it was not accompanied by hospital or medical records showing medical treatment or hospitalization as well as the date(s) of the treatment or hospitalization as set forth in 8 C.F.R. § 244.9(a)(2)(iv).

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence or continuous physical presence in the United States during the periods. She has, thereby, failed to

establish that she 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.