

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



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FILE:  Office: NEBRASKA SERVICE CENTER

Date:  
JAN 25 2011

IN RE: Applicant: 

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

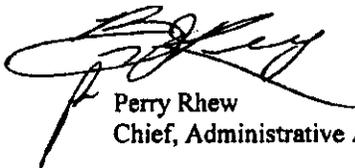
ON BEHALF OF APPLICANT: Self-represented

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 (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 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 the director's decision is in error as she has been habitually residing in the United States since 1998. The applicant asserts that she gave birth to her daughter on February 26, 2001 in the United States. The applicant asserts she returned to the United States on January 19, 2010, after a temporary trip aboard "required by extenuating circumstances beyond her control in conformity with 8 C.F.R. section 244.1 and others."

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).

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

(1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;

(2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and

(3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

On her TPS application, the applicant indicates her date of entry into the United States as January 19, 2010. At Part 4, the applicant indicates that she entered on January 19, 2010, and has resided in the United States since that time.

Along with her TPS application, the applicant submitted a copy of the biographical page of her Haitian passport, her birth certificate with English translation and her Form I-94, Arrival-Departure Record, which reflected she was admitted into the United States on January 19, 2010, as a nonimmigrant visitor. The applicant also submitted an affidavit asserting, in pertinent part:

The January 12, 2010 earthquake in Haiti hurts me deeply. In addition to emotional distresses, this devastating earthquake caused to me huge material losses. As a result of that event my house had been completely and entirely destroyed, leaving me homeless with no place to leave, no clothes, no food, no clean water, etc. The miserable and fragile situation caused by the aftermath of that catastrophe had forced me to come to the United States of America on January 19, 2010, under the Visitor Status with a B-2 Visa with my daughter (name withheld)... in order for her specifically to be protected from the harms of disastrous effects of that events.

USCIS records reflect that the applicant was also admitted into the United States on July 19, 2004, August 16, 2007, and August 12, 2009, and the applicant departed the United States on August 18, 2004 and September 6, 2007.

The director determined that the applicant had failed to establish continuous residence in the United States since January 12, 2010. The director determined that the applicant's failure to maintain continuous physical presence and continuous 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 4, 2010, the director denied the application.

On appeal, the applicant contends that she has been habitually residing in the United States since 1998. The applicant asserts that she departed the United States on September 4, 2009 for emergent reasons. The applicant asserts that she was "obligated to travel at that time, for the purpose of having treatment by the traditional medicine from specialized Haitian professional in that field for a severe Hot and Cold disease, considering that medications from the scientific medicine is revealed inadequate for her treatment." The applicant asserts that this absence meets the criteria of brief, casual and innocent.

The applicant's statement is questionable as in her initial affidavit the applicant made no indication that she had been continuously residing in the United States before her departure on September 4, 2009, and that said departure from the United States was due to an emergent reason.

To meet his or her burden of proof, an applicant must provide supporting documentary evidence of eligibility apart from his or her own statement. 8 C.F.R. § 244.9(b).

On appeal, the applicant provides a statement from acquaintances, [REDACTED] and [REDACTED], who indicated that they have known the applicant since childhood. The affiants indicate that the applicant has been an active member for years [REDACTED], and that the applicant had made a temporary trip from the United States to Haiti from September 4, 2009 to January 19, 2010, for medical purposes.

The affiants make no attestations to the applicant's actual residence in the United States during the years they claim she was an active member [REDACTED]. The affiants' statements do not provide detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the period in question. To be considered probative, an affiant's affidavit must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant that would permit them to know of the applicant's whereabouts and activities throughout the period in question.

On appeal, the applicant provides copies of her daughter's birth certificate, social security card and U.S. passport. However, no evidence of her daughter's school or medical records was provided which may serve to establish the applicant's continuous residence in the United States.

The applicant claims to have been residing in the United States since 1998, and that her five-month absence from the United States was due to emergent reasons. The applicant, however, has not provided any contemporaneous documents to support her claim that she was continuously residing in the United States prior to January 12, 2010. The applicant's entries in 2004, 2007 and 2009 were for visitation purposes only and, therefore, do not constitute continuous residence. In light of the fact that the applicant claims to have continuously resided in the United States since 1998, this inability to produce contemporaneous documentation of residence raises serious questions regarding the credibility of the claim. Therefore, the issue of whether the applicant's departure from September 4, 2009 to January 19, 2010, was due to an emergent reason has no relevance in these proceedings.

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)).

As the applicant entered the United States on January 19, 2010, she has established continuous physical presence since January 21, 2010. Therefore, the director's finding on this issue will be withdrawn. However, because the applicant arrived in the United States subsequent to the eligibility period, she cannot meet the criteria for continuous residence in the United States since January 12, 2010, as described in 8 C.F.R. § 244.2(c). The AAO is bound by the clear language of the regulation and statute and lacks the authority to change them. 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.