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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



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DATE: JUN 13 2011 Office: NEBRASKA 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. § 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,


for 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 submits additional documents in support of her appeal.

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.

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, 2011, 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).

Along with her TPS application, the applicant submitted copies of: 1) the biographical page of her Haitian passport; 2) her birth and marriage certificates with English translations; 3) her Haitian identification card; 4) a customer receipt dated July 9, 2010 from Western Union; and 5) a certificate written in French/Creole language without the required English translation.¹

On September 17, 2010, the applicant was requested to submit evidence establishing her continuous residence since January 12, 2010 and continuous physical presence in the United States since January 21, 2010, to the date of filing. The applicant was informed that if she had a brief, casual,

¹ 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).

and innocent absence from the United States during this period, or a brief temporary trip abroad required by emergency or extenuating circumstances outside her control, she was to submit evidence to support the absence.

The applicant, in response, provided a Patient Ledger Summary and a Patient Statement from [REDACTED] reflecting several visits during August 2008.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS. The director noted that the applicant had departed the United States on August 30, 2008, and did not return until June 19, 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 October 15, 2010, the director denied the application.

On appeal, the applicant submits a letter dated January 4, 2011, from [REDACTED] Florida, who indicated that the applicant had visited its church in July 2008, and that she has been a member of the church since November 2010. The applicant also submits a copy of her Form I-94, Arrival-Departure Record, which reflected she was admitted into the United States on July 21, 2008.

The applicant's statements and documents on appeal have been considered. However, the applicant's visit to the United States in 2008 only serves to establish that the applicant was present in the United States during the duration of her visit; it does not establish *continuous* residence or *continuous* physical presence in the United States. As noted in the director's decision, the applicant departed the United States on August 30, 2008. The applicant's last arrival in the United States was subsequent to the eligibility period. Therefore, under the present designation, the applicant 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). 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.