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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

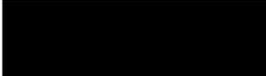


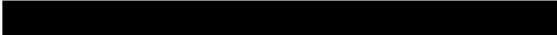
**U.S. Citizenship
and Immigration
Services**



M,

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

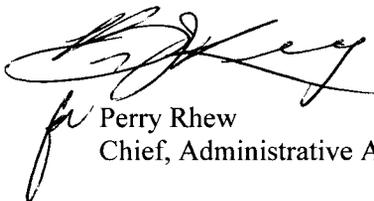
ON BEHALF OF APPLICANT: Self-represented

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,



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 requests that due to the conditions in her native country, Haiti, 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.

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, 2010, 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).

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

USCIS records reflect that on February 11, 2010, the applicant filed her initial TPS application [REDACTED]. That application was denied on July 29, 2010, as the applicant failed to establish continuous residence in the United States since January 12, 2010, and continuous physical presence in the United States since January 21, 2010. No appeal was filed from the denial of that application.

The applicant filed the current TPS application on September 20, 2010. The applicant provided a statement dated August 30, 2010, indicating that she came to the United States in October 23, 2008,

and had no intention of returning to her native country, Haiti. The applicant asserted that on July 15, 2009, her husband was in a car accident and, therefore, she returned to Haiti the next day.

Along with her current TPS application, the applicant submitted: 1) a copy of the biographical page of her Haitian passport; 2) a copy of her birth certificate with English translation; 3) a copy of her Form I-94, Arrival-Departure Record, which reflected she was admitted into the United States on January 22, 2010, as a nonimmigrant visitor; 4) a copy her son's U.S. passport; 5) an amended letter dated September 1, 2010, from the pastor of [REDACTED] Church, who indicated that the applicant has been visiting the church since October 2008; 6) a letter dated September 13, 2010, from [REDACTED] who indicated that the applicant had been residing with her since October 23, 2008, at [REDACTED]. The affiant indicated that the applicant temporarily returned to Haiti on July 16, 2009 to take care of her spouse who was involved in a car accident; and 7) a letter dated September 7, 2010, from [REDACTED], a medical doctor, who indicated she has been the primary care pediatrician for the applicant's son since February 20, 2009.

On December 1, 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, 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 letter dated December 15, 2010, from [REDACTED] Silver Spring, Maryland, who indicated that the applicant has been enrolled in English as a Second Language (ESL) class since February 2, 2010. The applicant also provided copies of a letter dated December 15, 2010, from Capital One Bank indicating that the applicant had maintained a savings account since June 25, 2010, and a pre-registration form from Montgomery College (Maryland) for ESL dated September 7, 2010.

USCIS records reflect that the applicant entered the United States on October 21, 2008, and departed on April 17, 2009. The applicant reentered the United States on May 10, 2009, and departed the United States on July 16, 2009. The applicant reentered the United States and departed again on August 28, 2009. The director determined that the applicant's previous B-2 entries into the United States did not establish continuous residence and continuous physical presence in the United States. 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 January 6, 2011, the director denied the application.

The applicant's statements on appeal have been considered. However, the applicant last arrived in the United States 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.