

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

**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: CALIFORNIA 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 California 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 California 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, California 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, "I was present in the state at that given date, and I also sent the require information they requested." 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 her Florida identification card issued on November 15, 2006, and her marriage certificate that occurred on August 1, 2005, in Florida.

On November 29, 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 was also requested to submit evidence to establish her nationality and identity. The applicant, in response, provided the following documentation:

- Her daughter's birth certificate, who was born on July 6, 1999, in Florida.

- An extract from Registrars of Birth Act from the Nationals Archives of Haiti with English translation, which reflected that the applicant was born in Nassau, Bahamas on August 22, 1980.
- An additional copy of her Florida identification card dated November 15, 2006.

On January 19, 2011, the applicant was again 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:

- School transcripts for an unknown individual from the Broward County School District for the years 1994 through 1998.
- Medical documents dated February 17, 2004, and in February 2005.
- An additional copy of her daughter's July 6, 1999 birth certificate.
- A letter dated January 9, 2004, from the Florida Department of Revenue.

The director noted that none of the documents submitted were dated after 2006, and, therefore, the applicant had not established continuous residence in the United States since January 12, 2010 and continuous physical presence since January 21, 2010. Accordingly, on March 14, 2011, the director denied the application.

On appeal, the applicant submits:

- Documentation dated October 28, 2009, March 15, 2010, April 27, 2010, July 7, 2010, from the School Board of Broward County, Florida.
- A money order dated April 9, 2010.
- A printout report of her daughter's eligibility for food stamps starting from April 22, 2010.
- A wage and tax statement for 2007.
- An earnings statement for the pay period ending May 26, 2009.
- A social security statement dated May 25, 2010, reflecting the applicant's earnings from 1998 through 2009.
- Her daughter's progress report from Broward Estates Elementary School for the first quarter marking period of the school year 2009-2010.
- A letter dated April 23, 2010, from First Premier Bank.
- A Notice of Case Action dated October 3, 2008, from the State of Florida Department of Children and Families.
- A notice dated July 13, 2010 from Florida Medicaid.

A review of the documents submitted throughout the application process does not establish with reasonable probability that the applicant has been continuously residing in the United States since January 12, 2010 and has been continuously physically present since January 21, 2010. Specifically, the documents from the School Board of Broward County do not establish that the applicant's daughter was actually attending school during the period in question. The social

security statement only serves to establish the applicant's earnings through 2009. The remaining documents are either dated prior to or subsequent to the period in question. The applicant has not submitted sufficient evidence to establish her qualifying continuous residence or continuous physical presence in the United States during the requisite 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 application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

An alien shall not be eligible for TPS under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under the term "felony" of this section. For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 244.1.

The Federal Bureau of Investigation report dated August 18, 2010, reflects the following offenses in the state of Florida:

1. On December 30, 2001, the applicant was arrested by the Fort Lauderdale Police Department for disorderly conduct.
2. On July 20, 2004, the applicant was arrested by the Broward County Sheriff's Office for battery and failure to appear.

On November 29, 2010, the applicant was requested to submit certified judgment and conviction documents for all arrests. The applicant, in response, provided court documentation in Case no. [REDACTED], indicating on August 26, 2004, she pled no contest to disorderly conduct, a violation of Florida Statute 877.03, a misdemeanor of the second degree. Adjudication of guilt was withheld, and the applicant was ordered to pay court cost. The applicant also provided court documentation in [REDACTED] which reflects that the battery offense was not prosecuted.

On appeal, the applicant submits court documentation in [REDACTED] which indicates that on November 3, 2010, she pled no contest to operating a vehicle without a valid license, a violation of Florida Statute 322.03(1), a misdemeanor of the second degree. Adjudication of guilt was withheld and the applicant was ordered to pay a fine and court cost.

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

The court documents reflect that the applicant pled no contest to the offenses and the judge ordered some form of punishment to each charge. Therefore, the applicant has been "convicted" of the offenses for immigration purposes.

The applicant is ineligible for TPS due to her two misdemeanor convictions in the United States. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). There is no waiver available, even for humanitarian reasons, of the requirements stated above.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.