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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/1

DATE: Office: CALIFORNIA SERVICE CENTER

FILE:

JUN 15 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 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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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: 1) a prior order of removal had been reinstated and the applicant was not eligible to apply for any relief pursuant to section 241(a)(5) of the Act; 2) the applicant failed to establish she had continuously resided in the United States since January 12, 2010; and 3) the applicant failed to establish she had been continuously physically present in the United States since January 21, 2010.

On appeal, the applicant asserts that she has been residing in the United States since March 3, 1993. The applicant asserts, “[f]or FEAR of being removed or deported from the US to Haiti, I chose the path of taking refuge in Canada with my children due to the social, political, and economical situations in Haiti.” The applicant requests that her TPS application be reconsidered and approved. The applicant submits copies of her Florida driver license issued on July 20, 2010, her employment authorization card valid from August 18, 2010, and her children’s U.S. birth certificates.

Section 241(a)(5) of the Act provides:

If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under the Act, and the alien shall be removed under the prior after at any time after the reentry.

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.

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 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 September 3, 1997, the applicant acquired conditional residency through marriage to a United States citizen. On March 21, 2007, a notice was sent to the applicant informing her that the Form I-751, Petition to Remove the Condition on Residence, was terminated pursuant to 8 C.F.R. § 216.5(f). On March 21, 2007, a Form I-862, Notice to Appear, was issued and served on the applicant. On August 24, 2007, the applicant departed the United States to Canada. A removal hearing was held on January 16, 2008, and the alien was ordered removed *in absentia*.

On February 27, 2010, the applicant was apprehended by the U.S. Border Patrol in North Troy, Vermont after entering the United States without inspection, and a Form I-871, Notice of Intent/Decision to Reinstate Prior Order, was issued. On April 19, 2010, a Form I-205, Warrant of Removal/Deportation, was issued.

The director, in denying the application on December 22, 2010, determined that the applicant had failed to establish eligibility for TPS as the evidence of record did not reflect that she was continuously residing in the United States from January 12, 2010, and that she was continuously physically present in the United States from January 21, 2010. The director also determined that the applicant was not eligible to apply for any relief pursuant to section 241(a)(5) of the Act because a prior order of removal had been reinstated.

The reinstatement of the prior order does not appear to have been enforced as the record contains no evidence that the Form I-205 has been executed. As such, the AAO cannot concur with the director's finding regarding this issue.

The applicant's statements and documents submitted on appeal have been considered. However, the applicant's last entry into the United States was subsequent to the eligibility period. Therefore, she cannot meet the criteria for continuous residence and continuous physical presence in the United States, as described in 8 C.F.R. § 244.2(b) and (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 on these issues 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.