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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 22 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,

for 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 that she reentered the United States from Canada on March 15, 2010. The applicant states that her TPS application should be approved as “the Department embroils itself into confusion as to reconciling its record.”

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 the applicant attempted entry into the United States on April 20, 1996, with a fraudulent Haitian passport. On September 24, 1996, an exclusion hearing was held and the applicant was order excluded and deported *in absentia* from the United States. On March 7, 2001, the applicant filed a motion to reopen, which was denied by the immigration judge on March 19, 2001. On March 15, 2010, the applicant was apprehended by the U.S. Border Patrol in North Troy, Vermont after entering the United States without inspection. On the same date, a Form I-871, Notice of Intent/Decision to Reinstate Prior Order, and a Form I-205, Warrant of Removal/Deportation, were issued.

At the time of her apprehension on March 15, 2010, the applicant indicated that she departed the United States in July 2007 to Canada where she applied for asylum. On April 1, 2010, a Form I-220B, Order of Supervision, was issued which appears to be still in effect.

The record contains three photocopied Form IMM 1442 (03-2003) B, which indicated that on: 1) July 22, 2007, the applicant was granted refugee status by the Canadian government valid through July 22, 2012; 2) October 9, 2007, the applicant was issued a travel permit by the Canadian government valid through July 22, 2009; and 3) July 8, 2008, the applicant was eligible for federal health by the Canadian government valid through July 8, 2009. The record also contains a Canadian Police Certificate dated January 12, 2009, and a Canadian learner's permit issued in 2009, which listed the applicant's residence in Montreal, Canada. On her Form DS-230, Application for Immigrant Visa and Alien Registration, filed January 30, 2009, the applicant listed her residence from July 2007 to the present in Montreal, Canada.

On January 20, 2011, 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, in response, provided the following documentation:

- A social security card issued to the applicant on July 21, 2010.
- A Florida identification card issued on June 3, 1996 and expired July 20, 1999.
- A student identification card issued in 1998 and her high school transcripts from Dr. [REDACTED] which indicate that the applicant received her diploma on May 24, 1999.
- Her children's birth certificates who were born in Florida on March 17, 2000, and February 9, 2002.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on February 17, 2011. It is noted that the director, in her decision, inadvertently indicated that a notice was sent to the applicant on January 20, "2010" requesting submission of further evidence. This was a harmless error by the director, which did not affect the outcome of her decision and has not prejudiced the applicant. The record clearly reflects that the applicant received a notice dated January 20, "2011."

On appeal, the applicant asserts, "it is well established practice that the Social Security Administration does not stamp date security card when issuing a No. to a holder." The applicant's assertion, however, has no merit because beginning April in 2007, the issuing date of the social security card is printed under the signature line.¹ The social security card submitted by the applicant clearly indicates an issuance date of July 21, 2010. The applicant has not provided any credible evidence to refute this date.

¹ See [http://\[REDACTED\]](http://[REDACTED])

On appeal, the applicant asserts that she briefly departed the United States “to visit a family member who died in Montreal.” However, the applicant has not provided any evidence to support this assertion. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972. Under 8 C.F.R. § 244.2(f)(2),

On appeal, the applicant asserts, in pertinent part:

On one hand, it stated that some of its record indicated that I left the US in 2007, in another part, it stated that its records indicated that I was present here up to 2003 and, on the other hand, the Department stated that I re-entered the United States on March 15. Furthermore, the Department stated that I responded to a request it sent me on January 20, 2010, a day before the required day a Haitian national has to be physically present in the United States in order to be eligible for the (“TPS”) due to the earth quake disaster in Haiti on January 12, 2010.

The applicant’s assertion that the director’s decision contains contradictory dates of her departure and reentry into the United States has no merit. The director in determining that the applicant was residing in the United States up to 2003, based the decision on the contemporaneous evidence contained in the record. Based on the applicant’s statement at the time of her apprehension on March 15, 2010, and the Form IMM-1442B that indicated the applicant had been granted refugee status from the Canadian government on July 22, 2007, the director determined that the applicant had departed the United States in 2007. The fact remains that the applicant has not submitted any evidence to establish her qualifying continuous residence since January 12, 2010 and her continuous physical presence since January 21, 2010 in the United States. 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 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.