

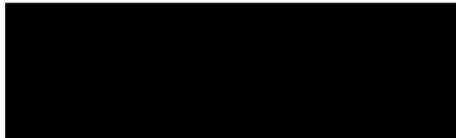
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE:  Office: NEBRASKA SERVICE CENTER Date: **MAR 01 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 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 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 he 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 his native country, Haiti, his 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.

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).

Along with his TPS application, the applicant submitted a copy of his birth certificate with English translation, an American Airlines boarding pass dated November 14 (year not listed) from Port Au Prince, Haiti to Miami International Airport and a document dated May 26, 2010 from [REDACTED] in Stone Mountain, Georgia. On his TPS application, the applicant indicated that he last entered the United States on November 14, 2009.

On July 15, 2010, the applicant was requested to submit evidence establishing his 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 a photo identity document. The applicant was informed that if he 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 his control, he was to submit evidence to support the absence. The applicant,

in response, submitted a statement written in the Creole language without the required English translation. The applicant also provided the following:

- A letter dated August 10, 2010, from a cousin, [REDACTED] who attested to the applicant's moral character.
- A letter dated August 15, 2010, from a cousin, [REDACTED] who indicated that the applicant has been residing in his home [REDACTED] since February 2010. The affiant attested to the applicant's moral character.
- A letter dated August 6, 2010, from [REDACTED] who indicated he met the applicant at a church in the Miami area in January 2010.
- A copy of the biographical page of his Haitian passport.
- Copies of his Haitian identification cards
- A copy of his Georgia identification card issued on July 27, 2010, and his employment authorization card valid from June 25, 2010 to July 22, 2011.
- A Western Union money gram dated January 29, 2010.
- Money order receipts dated January 20, 2010, February 12, 2010, and June 10, 2010.
- An additional copy of the document from [REDACTED], in Stone Mountain, Georgia.

USCIS records reflect that the applicant was admitted into the United States as: 1) an alien in transit (C-1) on November 14, 2009, and departed on November 15, 2009; 2) a crewman (D-1) on November 21, 2009, and departed on December 20, 2009; 3) as a non-working crewman-going to join ship (D-2) on January 16, 2010; 4) as a non-working crew member-going to join ship (D-2) on February 7, 2010; 5) as a crew member (D-1) on February 13, 2010; and 6) as a non-working crew member on May 15, 2010.

The director, in denying the application, noted that USCIS records reflect that the applicant had arrived in and departed the United States as a crewman (D-1) on several occasions. The applicant's last entry was on May 15, 2010 and he departed June 13, 2010. The director determined that the letters from the affiants did not establish the applicant's continuous residence and physical presence in the United States during the periods in question. 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 his control. Accordingly, on September 14, 2010, the director denied the application.

The money order receipts have no probative value as the names of the payee and payer were not listed on the receipts. The Western Union money gram only serves to establish the applicant was in the United States on January 29, 2010; it does not establish continuous physical presence or continuous residence. USCIS records reflect that the applicant departed the United States on February 14, 2010.

The applicant's statements on appeal have been considered. The applicant, however, has not submitted any evidence to establish qualifying continuous residence or continuous physical presence in the United States during the requisite periods. He has, thereby, failed to establish that he 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.