

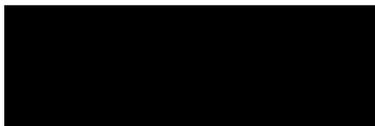
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

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



MA

FILE:  Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Applicant: 

MAR 08 2011

APPLICATION: Application for Temporary Protected Status under Section 244 of the  
Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 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 asserts that he never resided in Canada, and “if those papers that I filed at the Canadian border were to obtain refugee status, at this present time I would like to say to the service that I had no knowledge.” The applicant asserts that he departed the United States to see his family and to bring his son back to the United States to reside with him. The applicant asserts that at the time of his apprehension, he never stated that he had been residing near Montreal, Canada.

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 phrase *brief, casual, and innocent absence*, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and

(3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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 a Form I-862, Notice to Appear, was issued on August 31, 2000, and served on the applicant on September 5, 2000. The applicant's Form I-589, Application for Asylum and Withholding of Deportation, was filed on September 7, 2000. A removal hearing was held on June 12, 2001, and the applicant's asylum application was denied and he was ordered removed from the United States. The applicant appealed the decision to the Board of Immigration Appeals (BIA). On September 26, 2002, the BIA affirmed the decision of the immigration judge. On March 14, 2005, the applicant filed a motion to reopen before the BIA. On June 15, 2005, the BIA denied the motion.

The applicant indicated on his TPS application to have last entered the United States on October 15, 2009. Along with his TPS application, the applicant submitted a copy of: 1) the biographical page of his Haitian passport, 2) his social security card; 3) his Florida driver license, which expired on December 2, 2009; 4) a Notice of Action, Form I-797, regarding a Form I-360, Petition for Amerasian, Widower or Special Immigrant, filed on his behalf on March 26, 2007; 5) a notice dated September 20, 2007, from the California Service Center regarding the filing of a Form I-360; and 6) his son's birth certificate of August 10, 2006.

On June 22, 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 advised that if he had a brief, casual, and innocent absence from the United States, he was to submit documentation such as passport entries, plane or other transportation tickets, hotel receipts, and evidence of purpose of the travel. The applicant was informed that USCIS records reflected that he had entered the United States on February 5, 2010, and was apprehended by the U.S. Border Patrol. The applicant was advised that if he had been removed or departed from the United States prior to entering the United States on February 5, 2010, he was to provide an explanation and documentary evidence indicating his removal and/or departure.

USCIS records reflect that at the time of the applicant's apprehension, the applicant indicated that he was residing near Montreal, Canada after being denied refugee status in Canada. In his Record of Sworn Statement, the applicant admitted that on October 30, 2009, he voluntarily departed the United States after he was ordered removed. The applicant admitted that he was residing in Calgary, Canada and had traveled to Montreal where he paid an individual \$100.00 to drive him to the border. The applicant admitted that he was trying to get to Florida as he had family and a house in Fort Lauderdale.

The applicant, in response, submitted additional copies of the documents submitted with his TPS application along with:

- A letter dated September 14, 2007, addressed to the applicant in Fort Lauderdale, Florida regarding the dismissal of a traffic citation.
- A document from [REDACTED] reflecting an entry date of July 1, 2004 and a withdrawal date of June 30, 2005.
- A copy of his Florida driver license issued on June 8, 2010.
- A bank statement dated March 14, 2010, from Bank Atlantic.
- A document titled "Closing Instructions" dated December 4, 2006, from [REDACTED]. The document lists the applicant's name and another individual as the borrowers.
- A Registration of Corporation dated March 2006.
- Bank documents dated August 25, 2009, November 30, 2009, January 31, 2010, and April 30, 2010, from Sun Trust Bank addressed to Imagination Landscaping Services, Inc.
- A bank statement dated December 16, 2009, from Sun Trust Bank addressed to the applicant.
- An affidavit notarized July 21, 2010, from [REDACTED], who indicated that he has known the applicant for over five years. The affiant attested to the applicant's moral character.

The applicant, in an attempt to explain his departure from the United States, provided two separate statements. In one statement, the applicant asserted, in pertinent part:

I went to Canada on January 2010 to bring my family back to the USA right after the US government granted the Temporary Protected Status to the Haitian people. I returned from Canada to the USA on February 5, 2010.

In another statement, the applicant asserted, in pertinent part:

I went to Canada on January 22, 2010 to get my wife [REDACTED] and my son back to the USA right after the USA government granted the Temporary Protected Status to the Haitian people. I returned from Canada to the USA on February 5, 2010.

On August 25, 2010, the applicant was again requested to submit evidence: 1) establishing his continuous residence since January 12, 2010; 2) establishing his continuous physical presence since January 21, 2010, in the United States; and 3) that he had a brief, casual, and innocent absence from the United States. The applicant was advised again of his apprehension by the U.S. Border Patrol on February 5, 2010. The applicant was informed that at the time of his apprehension he gave a sworn statement indicating he had voluntarily departed the United States on October 30, 2009, after being ordered removed by an immigration judge. The director noted that, in response to the notice of June 22, 2010, the applicant had claimed to have departed the United States on January 22, 2010, in order to get his spouse, however, his spouse was not one of the individuals that were apprehended on February 5, 2010. The applicant was advised that he must provide convincing evidence establishing his physical presence in the United States from January 12, 2010 to January 22, 2010.

The applicant, in response, indicated that he has resided in the United States since October 15, 1999; married his spouse, [REDACTED], on April 8, 2005 in Plantation, Florida; had a son born on August 10, 2006, in Fort Lauderdale, Florida; purchased a home in Lauderhill, Florida on December 4, 2006; and has owned a landscaping business named [REDACTED] since March 2006. The applicant indicated, in pertinent part:

On October 30, 2009 I left the United States to go visit my wife and U.S. citizen son who were in Canada. I returned to the United States on February 4, 2010. My stay outside the United States lasted three (3) months. I failed to get Advance Parole documents before I left the country because I thought that it would be denied. Because I missed my wife and son so much, I decided to go to Canada in order to spend some time with them.

I always kept my financial and personal ties in the United States such as the house, the business and bank accounts because I always considered the United States as my permanent residence.

This visit to Canada was a brief and innocent trip and came about because of my sincere desire to see my wife and child.

The applicant submitted additional copies of the documents previously provided along with:

- A copy of his April 8, 2005 marriage certificate.
- An unsigned 2008 Form 1040, U.S. Individual Income Tax Return.
- A letter dated September 27, 2010, from [REDACTED] indicating that [REDACTED], has had an account opened since April 7, 2009.
- A document dated January 14, 2009, from the State of Florida regarding a lien satisfaction.
- A bank statement dated August 18, 2009, from [REDACTED] addressed to the applicant.
- A letter dated September 27, 2010, from a representative of Bank Atlantic, who indicated that the applicant has been an account holder since January 2004 and is currently in good standing.
- Bank documentation from Bank Atlantic dated February 5, 2009, and September 14, 2010.
- Receipts from [REDACTED], dated in September 2010.
- Copies of documentation from the Board of Immigration Appeals and the Immigration Court regarding his appeal and master calendar/individual hearings.
- A copy of the Form I-862 issued on August 31, 2000.
- A referral notice dated September 5, 2000 from the Miami Office regarding his asylum application.
- A copy of page one of his Form I-589.

The director, in denying the application, noted in pertinent part:

The bank statements submitted by the applicant indicate no transaction activities in his personal bank account since he left the U.S. Other bank statements submitted by the applicant are for the bank account of the business, "[REDACTED]"; however, the applicant did not submit any documentary evidence to establish that he is the owner of this business. Furthermore, according to the bank statement submitted for [REDACTED] for the month of November 2009 shows there were transaction activities occurred in Fort Lauderdale, FL, which indicate that another person had access to this account since the applicant was not in Fort Lauderdale, FL during the month of November.

Regarding the property at [REDACTED], the director determined that the document titled, "Closing Instruction" did not substantiate the applicant owned the property, but simply contained instructions on closing escrows. The director determined that based on this Closing Instruction document, the applicant was one of two borrowers for a mortgage loan.

Regarding the statements submitted in response to the June 22, 2010 notice, the director determined that the applicant had misrepresented himself by stating he departed the United States on January 22, 2010, when in fact he departed on October 30, 2009. The director determined that the applicant

had abandoned his residence in the United States as he sought to reside in Canada by applying for refugee status.

The director acknowledged that the applicant had been residing in the United States until October 2009. However, there was not sufficient evidence to substantiate that the applicant's absence from the United States from October 30, 2009 to February 5, 2010, was a "brief, casual, innocent absence." The director concluded that the applicant had not established continuous residence in the United States since January 12, 2010.

The director determined that as the applicant had not submitted sufficient evidence to establish his absence was a "brief, casual, innocent absence," he was not physically present in the United States until February 5, 2010. The director concluded that the applicant had not established continuous physical presence in the United States since January 21, 2010.

On appeal, the applicant asserts that he never applied to obtain refugee status in Canada. The applicant asserts, "[b]ut they gave me papers to fill out before crossing and to my knowledge those papers were for their record of having me entering their country." The applicant asserts that he was asked if he had family members in Canada and "my response was yes and I am here to see my family for a couple weeks and will take my son back with me."

The applicant had not addressed the director's finding regarding his claim to have gone to Canada in order bring his wife and son back to the United States, but at the time of his apprehension on February 5, 2010, his spouse was not one of the individuals who were arrested with him. As noted above, in his sworn statement of February 5, 2010, the applicant admitted that his family was residing in Florida.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I& N Dec. 582, 591-92 (BIA 1988).

The applicant's absence cannot be considered to be a brief, casual and innocent absence as he was subject to a prior order or removal and he effected a self-removal on October 30, 2009. See 8 C.F.R. § 244.1(2).

The applicant has not submitted any credible 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.

Finally, it is noted that the record reflects that on February 6, 2010, a Form I-871, Notice of Intent/Decision to Reinstate Prior Order, was issued. On May 12, 2010, a Form I-220B, Order of Supervision, was issued that appears to be still in effect

**ORDER:** The appeal is dismissed.