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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

PUBLIC COPY



M₁

FILE:



Office: NEBRASKA SERVICE CENTER

Date:

MAR 25 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 (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 acknowledges that she entered the United States on January 21, 2010. The applicant asserts that she returned to Haiti to identify a family member who was deceased, and that she reentered the United States on June 11, 2010. The applicant requests that due to the conditions in her native country, Haiti, her 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 her TPS application, the applicant submitted copies: 1) the biographical page of her Haitian passport; 2) her birth certificate without the required English translation;¹ 3) a letter dated February 1, 2010, from a sister, [REDACTED] who indicated that the applicant has been residing in her home [REDACTED] 4) documentation from [REDACTED] [REDACTED] regarding her children's progress during the period of April 12, 2010 through May 7, 2010;

¹ Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3).

5) a declaration stating she returned to Haiti on March 28, 2010, because "I wanted to find a way to help my children who live in the United States;" 6) the biographical page of her U.S. visa issued on June 19, 2006, in Port Au Prince, Haiti. The visa page has entry stamps admitting the applicant into the United States on July 12, 2006, and July 12, 2007; and 7) her Form I-94's, Arrival-Departure Record, which reflected she was admitted into the United States on January 21, 2010, and June 11, 2010, as a nonimmigrant visitor.

On September 9, 2010, the applicant was requested to submit evidence establishing her continuous residence since January 12, 2010 and continuous physical presence in the United States since January 21, 2010, to the date of filing. The applicant was informed that if she 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 her control, she was to submit evidence to support the absence.

The applicant, in response, provided additional copies of the documents that were submitted with her TPS application along with:

- An affidavit from [REDACTED] who indicated that she has known the applicant since childhood. The affiant attested to the applicant's entry into the United States on January 21, 2010, and to the applicant's residence [REDACTED] since that time. The affiant asserted that during this past summer the applicant spent two weeks with her and her family in Florida.
- An affidavit from [REDACTED] who indicated that he has known the applicant since primary school. The affiant attested to the applicant's entry into the United States on January 21, 2010, and to the applicant's residence [REDACTED] since that time. The affiant asserted that during this past summer the applicant spent two weeks with him and his family in Florida.
- Copies of several Western Union receipts dated in July 2010.
- Her cousin, [REDACTED] death certificate with English translation.
- A declaration with English translation signed by the applicant regarding her return trip to Haiti in order to identify [REDACTED] and to arrange his funeral.

The director determined that the applicant had not established continuous residence in the United States since January 12, 2010 and continuous physical presence since January 21, 2010. 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 her control. Accordingly, on October 26, 2010, the director denied the application.

The applicant's statements on appeal have been considered. According to the applicant, she arrived in the United States on January 21, 2010, departed on March 28, 2010, and did not return until June 11, 2010. Because the applicant's entry into the United States was subsequent to the eligibility period, she cannot meet the criteria for continuous residence in the United States since

January 12, 2010, as described in 8 C.F.R. § 244.2(c). The applicant has also failed to establish continuous physical presence in the United States since January 21, 2010, as described in 8 C.F.R. § 244.2(b). The AAO is bound by the clear language of the statute and lacks the authority to change the statute. 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.