

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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 31 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 puts forth the same rebuttal that was submitted in response to the Request for Evidence.

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 parole; 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 of: 1) the biographical page of her Haitian passport; 2) her birth certificate with English translation; 3) her U.S. visa issued on January 18, 2010, in Port Au Prince, Haiti. The visa was issued in order for the applicant to escort her grandson who is a U.S. citizen; and 4) her Form I-94, Arrival-Departure Record, which reflected she was admitted into the United States on January 19, 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 a copy of her grandson's U.S. passport and Florida birth certificate (born on November 28, 2006). The applicant asserted, "the day following the earthquake, I was under the jurisdiction of U.S., which could be categorized as though that I was in the United States, because the U.S. Consulate/Embassy constitutes the United States' territory," and

that she “paid a severe price by being held by the U.S. Embassy personnel to accompany the United States National.” The applicant asserted, in pertinent part:

I was ordered involuntarily to travel with the U.S. National, partly because he was a child. So I was given than opportunity to immigrate against my will, and in the process lost my valuable through and/lootings. Thus, it was unavoidable casualty that brought me to the U.S. Thus, the vague language used by the District Director as to the January 12, 2010 mandate has had no bearing on Beneficiary’s case in part because the trip at issue was involuntarily conditionally predicated on the U.S. Government’s pledge to grant Beneficiary further benefits.

The applicant asserted, “the after-January 12 bars do not apply to any persons who are beneficiaries of family unity protection under section 301 of the Immigration Act of 1990.”

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 14, 2010, the director denied the application.

The applicant is not eligible for the family unity program under the provisions of section 301 of the Immigration Act of 1990 (IMMACT 90) as she did not establish entry into the United States on or before May 5, 1988. *See* 8 C.F.R. § 236.12(a). In order to ensure that U.S. citizen children were safely evacuated, the U.S. government permitted Haitian relatives to escort minor children back to the U.S. Contrary to the applicant’s assertion, the U.S. government has no authority to *order* a Haitian citizen to leave his or her country. The applicant was issued a U.S. visa for the sole purpose to escort her grandson to the United States. In order to be eligible for TPS, the statute requires that an alien has continuously resided “in” the United States not merely be present “on” American property (i.e. consulate/embassy). *See* section 244.(c)(1)(A)(ii) of the Act.

The applicant arrived in the United States subsequent to the eligibility period. Therefore, 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 not provided any evidence to establish that she has been continuously physically present in the United States since January 21, 2010. Therefore, she has failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b). The AAO is bound by the clear language of the statute and regulations and lacks the authority to change them. 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.