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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  
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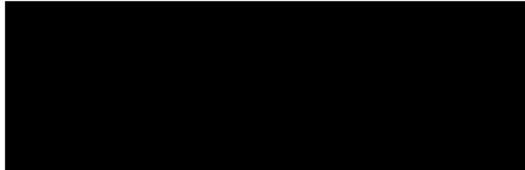
DATE: Office: NEBRASKA SERVICE CENTER FILE: 

**JAN 31 2012**

IN RE: Applicant: 

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

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 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. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motion will be granted. The case will be remanded to the director for further action.

The applicant is 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 submit the required Form I-601, Application for Waiver of Grounds of Inadmissibility, due to her inadmissibility under section 212(a)(6)(C)(i) of the Act.

The AAO, in dismissing the appeal on April 4, 2011, concurred with the director's findings. The AAO, upon a *de novo* review,<sup>1</sup> also dismissed the appeal because the applicant failed to establish she had continuously resided in the United States since January 12, 2010, and had been continuously physically present in the United States since January 21, 2010.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

A motion to reconsider must state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy ... [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, counsel asserts that due to the applicant's lack of education, she misunderstood the process and did not file the appropriate documentation and forms. Counsel submits the Form I-601 and supporting evidence to establish the applicant's continuous residence and continuous physical presence in the United States during the requisite periods. The evidence submitted consists of the following:

- Medical documentation from OMI Diagnostic in Alpharetta, Georgia dated February 15, 2010.

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<sup>1</sup> The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9<sup>th</sup> Cir. 1991). The AAO's *de novo* authority has long been recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

- The applicant's patient history from Providence Womens Healthcare, reflecting a date of service on April 14, 2011 and several dates of service during the month of January 2010.
- An electric bill from Georgia Power Company for services from January 20, 2010 to February 3, 2010.
- An account activity statement from Georgia Power Company for services from January 20, 2010 through April 4, 2011.
- An additional copy of a birth certificate for her daughter who was born [REDACTED]
- A school transcript from [REDACTED] reflecting the attendance of the applicant's daughter from January 5, 2010 to May 21, 2010.

Coupled with the documents previously submitted, the applicant, on motion, has submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during requisite periods. She has, thereby, established that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Therefore, the decisions of the director and the AAO will be withdrawn.

The Form I-601 submitted on motion, however, remains unadjudicated. Accordingly, the case will be remanded for the adjudication of the waiver application. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS. An adverse decision on the waiver application may be appealed to the AAO.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The motion is granted. The decisions of the director dated August 12, 2010, and the AAO's dated April 4, 2011, are withdrawn. The case is remanded for further action consistent with above and entry of a new decision.