

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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

M₁



DATE: **JUL 11 2012** Office: CALIFORNIA SERVICE CENTER

FILE:

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: 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 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 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, 2011; and 2) been continuously physically present in the United States since July 23, 2011.

On appeal, the applicant asserts that he was residing in the United States prior to his last entry on September 19, 2011. The applicant states, "I only left the US for a short time because I had an emergency, I had to go at the time to take care this matter. I first came to the United States on March 12, 2009." The applicant asserts that he is unable to submit additional documents to establish his residence and physical presence because "I didn't have any USCIS documents to work or to do anything. I was not able to rent a place to stay, to have bills in my name or to even open a bank account."

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 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.

Section 101(a)(33) of the Act defines the term "residence" as "the place of general abode; the place of general abode of a person means his principal, actual dwelling place, in fact, without regard to intent."

On January 21, 2010, the Secretary designated Haiti as a country eligible for TPS. This designation allowed nationals of Haiti who have continuously resided in the United States since January 12, 2010, and who have been continuously physically present in the United States since January 21, 2010, to apply for TPS. On May 19, 2011, the Secretary announced an extension of the TPS initial designation for Haiti until January 22, 2013. On May 19, 2011, the Secretary also re-designated Haiti for TPS eligibility which became effective on July 23, 2011, and remains in effect until January 22, 2013, upon the applicant's re-registration during the requisite time period. This re-designation allowed nationals of Haiti who have continuously resided in the United States since January 12, 2011, and who have been continuously physically present in the United States since July 23, 2011, to apply for TPS. The initial registration period for the new re-designation began on May 19, 2011, and ended on November 15, 2011.

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 applicant filed his TPS application on September 26, 2011. Along with his TPS application, the applicant submitted a copy of: 1) the biographical page and pages eight and nine of his Haitian passport; 2) the biographical page of his U.S. visa issued on June 26, 2008, in Nassau, Bahamas; 3) his birth certificate with English translation; and 4) his Form I-94, Arrival-Departure Record, which reflected he was admitted into the United States on March 12, 2009, as a nonimmigrant visitor.

On December 12, 2011, the applicant was requested to submit evidence establishing his continuous residence since January 12, 2011 and continuous physical presence since July 23, 2011, in the United States. The applicant was advised that at the time of his last entry on September 19, 2011, he indicated his country of residence as [REDACTED]. The applicant was requested to provide his addresses for three years prior to his entry into the United States. The applicant was informed that if he had resided in another country other than Haiti prior to entering the United States, he was to provide an explanation of his immigration status in that country; whether he had lawful permission to be in that country; whether the permission was temporary or permanent; the reasons for being in that country; the reason for leaving; whether he was a refugee from another country; whether he had the same privileges provided to other persons who lived permanently in the country; and reasons why he did not consider himself to have been firmly resettled in the country

other than Haiti before entering the United States. The applicant, in response, provided copies of documents previously submitted along with:

- A letter dated January 13, 2012, from [REDACTED] who indicated that they have been acquainted with the applicant since March 2009 as he has been “attending our services.”
- Statements from [REDACTED], who attested to knowing the applicant since March 2009.
- Medical documents dated August 13, 2010.

The director determined that the applicant had failed to address his residency in [REDACTED]. The director also determined that the applicant had not established continuous residence and continuous physical presence in the United States during the requisite periods. The director concluded that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on April 18, 2012.

On appeal, the applicant submits copies of documents previously provided along with a copy of: a) his Florida temporary learner’s license issued on October 11, 2011; b) an enrollment document for an English as a Second Language class paid for on January 23, 2012; and c) a letter dated January 16, 2012, from [REDACTED], who indicates that he has known the applicant “from the year 2008 on territory of Naples to the present moment.” The applicant also submits a copy of his passport which reflects the following entry and departure stamps:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]

USCIS records reflect a departure date of August 19, 2010, from the United States.

The applicant’s statements on appeal have been considered. The AAO does not view the documents submitted as substantive to support a finding that the applicant continuously resided since January 12, 2011 and was continuously physically presence since July 23, 2011, in the United States. Specifically:

- The letters from [REDACTED] [REDACTED] has little evidentiary weight or probative value as they do not conform to the basic requirements. Most importantly, the affiants do not explain the origin of the information to which they attest.
- The statements from [REDACTED] also have little evidentiary weight or probative value as they do not provide detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite periods. To be considered probative, an affiant's affidavit must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant that would permit them to know of the applicant's whereabouts and activities throughout the requisite periods.
- The applicant's visits to the United States in 2008, 2009 and 2010 only serve to establish that the applicant was present in the United States during the duration of his visits; the visits do not establish *continuous* residence and *continuous* physical presence in the United States.
- The applicant departed the United States on August 19, 2010 and did not return until March 31, 2011. The applicant departed the United States again on or about April 8, 2011 and did not return until September 19, 2011. There is no evidence to indicate that an emergent reason delayed the applicant's return to the United States. The applicant's seven-month and five-month absences would appear to have been a matter of personal choice, not a situation that was forced upon him by unexpected events.
- The applicant has not provided any credible evidence that he maintained a "principal, actual dwelling place" in the United States during his absence from August 19, 2010 to March 30, 2011 and from April 8, 2011 to September 18, 2011.

The applicant has had the opportunity in response to the notice of December 12 2011, and on appeal to address the issue regarding his residency in [REDACTED]. The applicant's failure to address this issue is a strong indication that he is a resident of and his actual dwelling place is in [REDACTED]. 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 (BIA 1988).

The applicant's 2011 arrivals into the United States were subsequent to the eligibility periods. Therefore, he cannot meet the criteria for continuous residence in the United States since January 12, 2011 and continuous physical presence in the United States since July 23, 2011 as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.