

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

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DATE: JUN 11 2012 Office: CALIFORNIA SERVICE CENTER



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 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 with the California Service Center by filing a 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 continuously resided in the United States since January 12, 2011.

On appeal, the applicant submits additional evidence in an attempt to establish continuous residence in the United States.

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.

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. 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 19, 2011.

Along with his TPS application, the applicant submitted copies of the biographical pages of his Haitian passport and his U.S. visa issued on October 27, 2008, in Port Au Prince, Haiti. The applicant also submitted a copy of his Form I-94, Arrival-Departure Record, which reflected he was admitted into the United States on March 4, 2010 and July 7, 2011, as a nonimmigrant visitor.

USCIS records reflect that the applicant also entered the United States on September 10, 2010 and departed on March 4, 2011.

On January 11, 2012, 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 informed that if he 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 his control, he was to submit evidence to support the absence.

The applicant, in response, provided an undated letter from [REDACTED] of [REDACTED] in Miami, Florida, who indicated that the applicant first attended services on July 10, 2011, and has been attending services since that time.

The director determined that the applicant had not submitted any evidence to establish continuous residence in the United States since January 12, 2011. The director concluded that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on January 30, 2012.

On appeal, the applicant submits a letter dated February 7, 2012, from [REDACTED] assistant principal of Miami-Dade County Public Schools, who indicates that the applicant is a student at North Miami Adult Education Center and that he had registered for an ESOL program

on April 19, 2010. The affiant provides registration documents dated August 25, 2010, January 4, 2011 and November 7, 2011.

The applicant also submits a letter dated February 20, 2012, from [REDACTED] who indicated due to his pre-deployment preparation, he was unable to travel to Haiti with his mother and he had asked the applicant to accompany his mother to Haiti. The affiant indicates, "I would like to confirm that his [the applicant's] absence was an emergency."

The letters from [REDACTED] and [REDACTED] have little probative value as no credible evidence was submitted to corroborate the affiants' statements. Without evidence of attendance the registration form from North Miami Adult Education Center is not sufficient to establish the applicant's residence in the United States since January 12, 2011.

As noted above the applicant departed the United States on March 4, 2011 and did not return until four months later. There is no evidence to indicate that an emergent reason delayed the applicant's return to the United States. Moreover, this absence was not due to any "emergent reason" – *i.e.*, one that was unforeseen at the time of his departure – because purportedly accompanying an individual to her native country was the specific reason for the applicant's absence from the United States. The applicant's four-month prolonged absence 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 submitted sufficient credible evidence to establish he has been in the United States since January 12, 2011. Further, the applicant was not residing in the United States from March 4, 2011 through July 6, 2011. Therefore, he cannot meet the criteria for continuous residence in the United States since January 12, 2011 as described in 8 C.F.R. § 244.2 (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.

ORDER: The appeal is dismissed.