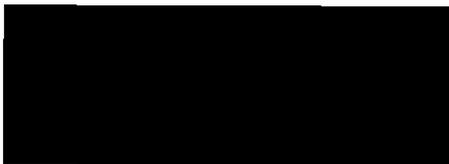


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



M₁

DATE: **JUN 20 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 she had continuously resided in the United States since January 12, 2011.

On appeal, the applicant asserts that she departed the United States on January 31, 2011 to visit her spouse in Haiti "because he was suffering and needed my presence."

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, 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 her TPS application on June 13, 2011. Along with her TPS application, the applicant submitted copies of the biographical pages of her Haitian passport and her U.S. visa issued on June 12, 2007, in Port Au Prince, Haiti. The applicant also submitted a copy of her Form I-94, Arrival-Departure Record, which reflected she was admitted into the United States on March 26, 2011, as a nonimmigrant visitor.

USCIS records reflect that the applicant was also admitted into the United States on January 25, 2010, and September 6, 2010, and that the applicant departed the United States on February 6, 2010, and January 31, 2011.

On November 29, 2011, the applicant was requested to submit evidence establishing her continuous residence since January 12, 2011, in the United States. 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, only provided an additional copy of her Haitian passport and airline passenger receipts from American Airlines pertaining to her flight itineraries from Haiti to Florida on September 6, 2010, and from Florida to Haiti on October 5, 2010.

The director determined that the applicant had not submitted any evidence to demonstrate her departure from January 31, 2011 to March 25, 2011 should be considered a "brief, casual and innocent" absence required by emergency or extenuating circumstances outside her control. The director concluded that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on February 6, 2012.

On appeal, the applicant asserts that her spouse, who resides in Haiti, had been shot on September 3, 2010, he then traveled to the United States on September 6, 2010, where he was seen, evaluated and treated by a medical doctor, [REDACTED] and that on October 5, 2010, her spouse returned to Haiti. The applicant states that she departed the United States on January 31,

2011, to visit her spouse “because he was suffering and needed my presence.” The applicant submits a letter dated February 24, 2012, from [REDACTED] Internal Medicine of Jacksonville, Florida, who indicates that he had treated the applicant’s spouse, [REDACTED] for a gunshot wound on September 7, 2010.

As noted above the applicant departed the United States on January 31, 2011, and did not return until 54 days 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 her departure – because visiting her spouse was the specific reason for the applicant’s departure from the United States. Except for her own statement, the applicant does not provide any independent, corroborative, contemporaneous evidence to support an emergent event had occurred while in Haiti. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The applicant’s absence would appear to have been a matter of personal choice, not a situation that was forced upon her by unexpected events. However commendable the applicant’s decision may have been to stay with her spouse, the applicant’s extended absence from the United States was not “due to emergent reasons” outside of her control that prevented her from returning far sooner.

The applicant was not residing in the United States from January 31, 2011 through March 25, 2011. Therefore, she 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.