

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: **OCT 01 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.

Thank you,


for 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 (AAO) on appeal. The appeal will be sustained.

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 indicates that she attended elementary school in the United States during "2010/2011 school year." The applicant submits additional evidence to establish continuous residence in the United States since January 12, 2011.

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 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 AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The applicant filed her TPS application on August 15, 2011. Along with her TPS application, the applicant submitted a copy of her [REDACTED] passport and her birth certificate with English translation. The applicant also submitted a copy of her Form I-94, Arrival-Departure Record, which reflected that she was paroled into the United States on April 11, 2011, pursuant to section 240 of the Act.

The record contains a Form I-213, Record of Deportable/Inadmissible Alien, which indicates that on April 11, 2011, the applicant arrived at the [REDACTED] from [REDACTED]. The applicant was referred to secondary inspection where it was determined that she had departed the United States on April 9, 2011, from an entry on October 16, 2010.

A review of the applicant's [REDACTED] passport indicates that during 2010, the applicant was admitted in the United States on March 4, 2010, August 2, 2010 (valid for 60 days) and October 16, 2010. Her passport also indicates that during 2010 and 2011, the applicant entered [REDACTED] on July 2, 2010, October 1, 2010 and April 9, 2011, and she departed on March 4, 2010, August 2, 2010, October 16, 2010 and April 11, 2011.

The applicant throughout the application process provided documentation from the [REDACTED] County Public Schools in Florida indicating that she has been attending school since April 2010.

The AAO concludes that based upon the above information, the applicant had been residing in the United States from October 16, 2010 through April 8, 2011, and she has submitted sufficient evidence to establish her qualifying continuous residence since January 12, 2011. Her absence of two days (April 9 and 10, 2011) from the United States is considered to be brief, casual and innocent. The applicant has, thereby, established that she has met the criteria described in 8 C.F.R. § 244.2(c). Therefore, the decision of the director will be withdrawn.

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 met this burden.

ORDER: The appeal is sustained.