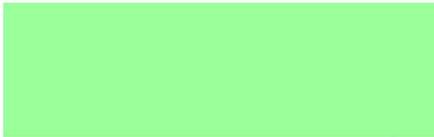


(b)(6)

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

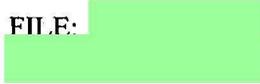


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APR 03 2013

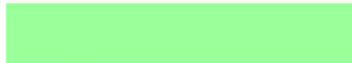
Office: CALIFORNIA SERVICE CENTER

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting 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 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 asserts that the director's decision was erroneous as she has been continuously residing in the United States since January 12, 2011. The applicant states that her absence from the United States was due to an emergency as one of her children was sick in Haiti.

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 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; and

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 re-designated Haiti for TPS eligibility which became effective on July 23, 2011. 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. On October 1, 2012, the Secretary announced an extension of the TPS designation for Haiti until July 22, 2014, upon the applicant's re-registration during the requisite time period.

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 record reflects that the applicant filed her initial TPS application on October 31, 2011. Along with her TPS application, the applicant submitted:

- A copy of her Haitian passport, which has: 1) entry stamps admitting the applicant into the United States as a nonimmigrant visitor on December 1, 2008, June 5, 2009, June 1, 2010 and December 3, 2010; 2) entry stamps into Haiti on November 29, 2009, November 29, 2010 and April 28, 2011; and 3) departure stamps from Haiti on December 1, 2008, March 12, 2010, June 1, 2010, and December 3, 2010.
- A copy of her Form I-94, Arrival-Departure Record, which reflected she was admitted into the United States on May 6, 2011, as a nonimmigrant visitor.
- A notarized affidavit from a sister, [REDACTED] who indicated that since the applicant's arrival on December 3, 2010, she has been residing with her at [REDACTED] Immokalee, Florida. The affiant indicated that she has been supporting the applicant "with everything including room, food, water light, telephone, clothing, transportation, entertainment, and so forth." The affiant attested to the applicant's absence from the United States from April 23, 2011 to May 6, 2011.
- Money gram receipts dated November 1, 2010 and January 31, 2011, from Caribbean Airmail Inc., and a cellular phone receipt with a due date of November 15, 2011.

On February 17, 2012, the applicant was requested to submit evidence establishing her continuous residence since January 12, 2011. 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, provided copies of documents that were previously submitted along with:

- An additional affidavit from [REDACTED] who attested to the applicant residing with her since December 3, 2010 and to the applicant's absence from the United States from April 23, 2011 through May 6, 2011.
- Affidavits from [REDACTED] and [REDACTED] of Immokalee, Florida, who attested to the applicant's visit in December 2008 and to her continuous residence in the United States since May 2011. The affiants based their knowledge on having the applicant as a neighbor. The affiants asserted that they have remained friends with the applicant since that time.
- Money gram receipts dated April 26, 2010, October 29 2011 and in January 2012, from Caribbean Airmail Inc., and a sales receipt dated November 15, 2010.
- A cellular phone contract from Boost Mobile dated June 8, 2011 and a receipt with a due date of April 17, 2012.
- A Form I-797C, Notice of Action, dated December 14, 2011.

The director determined that the applicant had failed to submit sufficient evidence to establish her continuous residence since January 12, 2011. The director also determined that the applicant had not established that her absence from the United States in 2011 was brief and casual. The director denied the application on August 1, 2012.

On appeal, the applicant provided copies of the documents that were previously submitted along with:

- Money gram receipts dated April 20, 2011 and February 18 and 27, 2012, from Caribbean Airmail Inc., and cellular phone receipts dated in 2012.
- A copy of her Haitian passport with an exit and entry stamp of May 6, 2011 from Haiti and into the United States.
- A statement dated August 27, 2012, from a manager of Boost Mobile, who indicated that the applicant has been a customer since June 8, 2011 and is in good-standing.

The documentation provided throughout the application process may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of continuous residence in the United States during the requisite period. 8 C.F.R. § 244.2(c). Although the applicant did not provide evidence to support her claim that her child was sick in Haiti, her 13-day absence in 2011 was brief and casual and did not interrupt her "continuous residence" in the United States.

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.