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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

DATE: DEC 09 2013

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

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

Ron Rosenberg
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 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 was eligible for late registration. The director also denied the application because the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant states that she is eligible for the benefit sought as the director did not consider her Form I-94, Arrival/Departure Record, that proves her entry into the United States "within the time frame that allows me to apply for TPS." The applicant requests that her application be reconsidered and approved.

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
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the FEDERAL REGISTER, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary

departure, or any relief from removal which is pending or subject to further review or appeal;

(iii) The applicant is a parolee or has a pending request for reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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 AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.

The first issue to be addressed is whether the applicant is eligible for late registration.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above. If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

The record reflects that the applicant filed her initial TPS application on January 25, 2013 and it was considered under the late registration provisions described in 8 C.F.R. § 244.2(f)(2). Along with her TPS application, the applicant submitted a copy of the biographical page of her Haitian passport and her Form I-94, which reflected she was admitted into the United States on July 2, 2010, as a nonimmigrant visitor.

On March 11, 2013, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, in response, only provided the documentation in an attempt to establish residence and physical presence in the United States.

The director indicated that the applicant's non-immigrant status had expired on January 1, 2011 and that the current application was not received within the 60 days of the expiration of her non-immigrant status pursuant to 8 C.F.R. § 244.2(g). The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on July 11, 2013.

On appeal, the applicant neither addresses the finding of her ineligibility as a late registrant nor provides any evidence to establish her eligibility as a late registrant. The provisions for late registration were created in order to ensure that TPS benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations. The applicant has not submitted evidence that she has met one of those provisions outlined in 8 C.F.R. § 244.2(f)(2) and (g). Consequently, the director's conclusion that the applicant had failed to establish her eligibility for late registration will be affirmed.

The second and third issues to be addressed are whether the applicant has established her continuous residence in the United States since January 12, 2011, and her continuous physical presence in the United States since July 23, 2011.

On March 11, 2013, the applicant was also requested to submit evidence establishing her qualifying continuous residence and continuous physical presence 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,

submitted additional copies of her Form I-94 and the biographical page of her Haitian passport as well as copies of:

- A letter dated April 19, 2013, from [REDACTED] listing several money transfers the applicant conducted with its company in 2007 (June, August and September), 2011 (April), 2012 (February, March, April and December) and 2013 (January and March).
- A letter dated April 17, 2013, from the pastor and associate pastor of [REDACTED] Florida, who indicated that the applicant had joined the church on July 18, 2010 and is an active member of the church.
- A letter dated April 19, 2013, from [REDACTED] an acquaintance, who indicated that she had known the applicant for over 30 years and attested that the applicant has been residing at her home at [REDACTED]

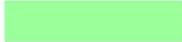
The director determined that the documents submitted did not establish continuous residence and continuous physical presence in the United States during the requisite periods as the applicant had several arrivals and departures since her 2010 entry. Specifically:

<u>Date of Entry</u>	<u>Date of Departure</u>
July 2, 2010	December 19, 2010
February 4, 2011	July 22, 2011
February 10, 2012	July 2, 2012
August 3, 2012	

The director determined that the applicant had failed to submit sufficient evidence to establish that her absences were brief, casual, and innocent required by emergency or extenuating circumstances outside her control. The director also determined that the letters from Ms. [REDACTED] and [REDACTED] lacked credibility as there was no mention of the applicant's absences from the United States. The director concluded that the applicant did not meet the criteria for continuous residence and continuous physical presence during the requisite periods and denied the application.

Contrary to the applicant's assertion, the director did consider the applicant's July 2, 2010 entry. As the applicant departed the United States on December 19, 2010, and reentered on February 4, 2011, the applicant cannot establish continuous residence in the United States since January 12, 2011. As noted above, the applicant had not established that her absence (December 19, 2010 through February 3, 2011) was brief, casual and innocent required by emergency or extenuating circumstances outside her control. Further, the applicant cannot establish continuous physical presence in the United States since July 23, 2011 as she departed the United States a day before and did not reenter until February 10, 2012.

The applicant has, therefore, failed to establish that she has met the criteria 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 also 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.