



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUN 24 2013 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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the California Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


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 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's two previous trips outside of the United States were not brief, casual and innocent and, as such, he had failed to establish he had continuously resided in the United States since January 12, 2011; and he had been continuously physically present in the United States since July 23, 2011.

On appeal, counsel states that the applicant has maintained continuous residence and continuous physical presence in the United States, and that his two absences in 2011 were brief, casual and innocent and due to events beyond his control.

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; and
- (f)
 - (1) Registers for Temporary Protected Status 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.

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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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).

On April 24, 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 director determined that the applicant had failed to submit sufficient evidence to establish his continuous residence in the United States since January 12, 2011, his continuous physical presence in the United States since July 23, 2011, that any departure from the United States was brief, casual and innocent or that the departure was due to a brief trip abroad required by emergency or extenuating circumstances outside the applicant's control, and his eligibility for late initial filing for TPS.

Counsel submitted additional evidence in response to the request, including his I-94 Departure Record showing his last entry into the United States on October 26, 2011. The submission of this form established that the applicant was in valid B-2 nonimmigrant status during the initial registration period and, as such, the applicant established his eligibility for late initial registration.

The director determined, however, that the applicant's departures from the United States on two occasions in 2011 were not brief, casual and innocent and that the applicant, therefore, had not established that he had maintained continuous residence and continuous physical presence in the United States during the requisite period. The director denied the TPS application on August 21, 2012.

On appeal, counsel states that the applicant returned to Haiti on January 27, 2011 to care for his father, and when his father's health stabilized, the applicant returned to the United States on March 27, 2011. The applicant's father passed away on June 10, 2011, and the applicant again returned to Haiti to take care of funeral arrangements and the administration of his father's estate, which were his responsibilities as the oldest son in the family. Counsel states that the applicant only stayed in Haiti long enough to enable him to finish those duties. He states that the applicant maintained his home in the United States, and the applicant's wife and children remained in the United States and the children continued to attend school here during his absences. Counsel states that the applicant has not left the United States since his return on October 26, 2011.

The applicant submitted additional evidence on appeal, including:

- An affidavit from [REDACTED], signed by [REDACTED] indicating that the applicant's father was received at the [REDACTED] on May 17, 2011 and died on June 6, 2011.
- A receipt/installment payment agreement from [REDACTED] listing the applicant as the delegate of the family.
- Receipts for miscellaneous payments.

Counsel cites case law in which the courts determined that the individuals' trips were brief, casual and innocent, including cases in which the aliens left the United States for three and four

months to care for ailing relatives. *Fernandes v. McElroy*, 920 F. Supp, 428, 448 (S.D.N.Y. 1996), *De Oliveria*, 8873 F.Supp. at 344.

Even if the applicant's trip to Haiti from January 27, 2011 to March 27, 2011 to assist his father during his illness may have precluded his prompt return to the United States until after his father's health stabilized; the applicant has not submitted sufficient evidence to establish that it was necessary for him to remain in Haiti for more than four months after his father's passing in order to handle the estate. Counsel states that the applicant only stayed in Haiti long enough to enable him to finish duties related to his father's estate; however, there is no evidence of any actions that the applicant took on behalf of the estate during that time that required his presence in Haiti. The applicant's continued stay in Haiti subsequent to his father's death would appear to be a matter of personal choice, not a situation that was forced upon him by unexpected events. However commendable the applicant's decision may have been to remain in Haiti to settle the estate, the applicant's prolonged absence from the United States was not of short duration and reasonably calculated to accomplish the purpose for the absence.

The applicant's four-month stay in Haiti interrupted his continuous residence and continuous physical presence in the United States. Therefore, the applicant has failed to establish that he 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 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.