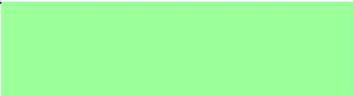




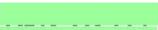
U.S. Citizenship
and Immigration
Services

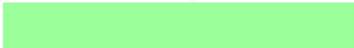
(b)(6)



DATE: **MAR 28 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

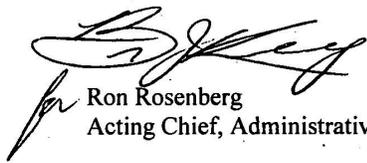
ON BEHALF OF APPLICANT: Self-represented

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.

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,



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 failed to establish she had: 1) continuously resided in the United States since January 12, 2011; and 2) been continuously physically present in the United States since July 23, 2011.

On appeal, the applicant submits additional documents in an attempt to establish her continuous residence and continuous physical presence in the United States during the requisite periods.

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 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 applicant filed her TPS application on November 16, 2011. Along with her TPS application, the applicant submitted copies of the biographical page of her Haitian passport issued on December 22, 2010 in Haiti and page six of her passport, which lists her entries into Haiti on December 28, 2010 and June 12, 2011, and an entry into the United States on January 7, 2011 as a nonimmigrant visitor. The applicant also submitted a copy of her Form I-94, Arrival-Departure Record, which reflected she was admitted into the United States on August 26, 2011, as a nonimmigrant visitor.

On February 6, 2012, the applicant was requested to submit evidence establishing her continuous residence since January 12, 2011 and continuous physical presence since July 23, 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, asserted that she has been residing in the United States subsequent to the earthquake in Haiti. The applicant submitted an altered letter from a representative of [REDACTED] in Tampa, Florida along with a Student Enrollment and Demographic Data Display from [REDACTED] which lists the applicant's enrollment date as September 8, 2011.

The director indicated that the letter from [REDACTED] was questionable as the enrollment date and grade had been altered. The director also indicated that USCIS records reflect that the applicant arrived in the United States on August 26, 2011. The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on May 11, 2012.

On appeal, the applicant submits copies of documents that were previously submitted along with page seven of her passport which reflects a departure and entry date of August 26, 2011 from Haiti and into the United States. The applicant also submits a printout of her immunization record, which indicates that she received vaccinations from the Florida Department of Health on

November 30, 2010, September 19, 2011 and March 21, 2012. The immunization record, however, only serves to establish that the applicant was present in the United States on the dates that the vaccinations were administered; it does not serve to establish continuous residence and continuous physical presence.

As mentioned above, the applicant entered the United States on January 7, 2011 and it appears from her passport she did not return to Haiti until June 12, 2011. The applicant, however, has not provided any evidence to support a claim of continuous residence in the United States since her entry of January 7, 2011 through the date of her departure on June 12, 2011.

Furthermore, the applicant has failed to establish that her departure from June 12, 2011 through August 26, 2011 was due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside her control. The applicant's absence of 75 days from the United States would appear to have been a matter of personal choice, not a situation that was forced upon her by unexpected events.

The applicant's statements on appeal have been considered. However, none of the documents submitted establish continuous residence since January 12, 2011. The applicant has, thereby, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(c). The record of proceeding establishes that the applicant was not in the United States on July 23, 2011. Therefore, she cannot meet the criteria for continuous physical presence since July 23, 2011 as described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application on these grounds for TPS will 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.