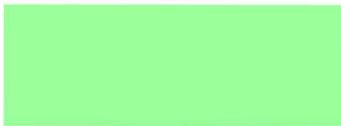


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

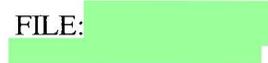


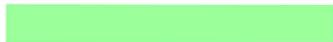
U.S. Citizenship
and Immigration
Services



DATE: NOV 08 2013

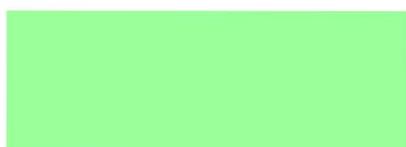
Office: CALIFORNIA SERVICE CENTER

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:



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

On appeal, counsel submits additional evidence in an attempt to establish the applicant's 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 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 in this proceeding 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 he 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 his initial TPS application on November 23, 2012. Along with his TPS application, the applicant submitted a letter dated November 15, 2012, from his aunt, [REDACTED] who indicated that the applicant did not file a TPS application during the initial registration period because "he was unable to pay the required fee and I wasn't able to help cover the charge at that time." The applicant also submitted a copy of his Haitian passport and Form I-94, Arrival/Departure Record, which reflected he was admitted into the United States as a nonimmigrant visitor on September 22, 2011 (valid through March 21, 2012).

USCIS records reflect that the applicant has been admitted into the United States since 2008 as a nonimmigrant visitor. In 2010, the applicant entered on June 3, 2010 and departed on July 7, 2010. In 2011, the applicant entered on September 22, 2011 and departed on October 9, 2011. In 2012, the applicant entered on April 3, 2012, departed on May 30, 2012 and last entered on November 8, 2012.

On March 29, 2013, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, in response, submitted an additional letter dated April 30, 2013 from [REDACTED] who indicated that due to financial hardship and his inability to submit the required documents to establish his physical presence in the United States, the applicant did not apply for TPS during the initial registration period.

The director determined that although the applicant, at the time the TPS application was filed, was in a valid nonimmigrant status his visitor visa had been granted one year after the initial registration period had expired. Therefore, his nonimmigrant status could not form the basis of eligibility for TPS after the initial registration period closed. The director noted that if the applicant was not able to afford the filing fee, nothing prevented him from applying for a fee waiver as indicated on the instructions to the Form I-821, Application for Temporary Protected Status. The director concluded that the applicant had failed to establish he was eligible for late registration and denied the application on June 4, 2013.

On appeal, the applicant neither addresses the finding of his ineligibility as a late registrant nor provides any evidence to establish his 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 he has met one of

those provisions outlined in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application on this ground will be affirmed.

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

On March 29, 2013, the applicant was also requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided the following;

- A letter dated April 18, 2013, from Reverend [REDACTED] senior pastor of [REDACTED] Florida, who indicated that the applicant has been a member of its church since November 2009.
- In her letter dated April 30, 2013, [REDACTED] indicated that the applicant had been residing in Miami, Florida since leaving Haiti in 2009.
- An affidavit from [REDACTED] Florida, who indicated that he has been a good friend of the applicant for seven years, and attested to the applicant's moral character.
- An affidavit from [REDACTED] who indicated that he has known the applicant for ten years and attested to the applicant's moral character.
- An undated metro [REDACTED] billing statement.
- Several documents dated subsequent to the requisite dates to establish continuous residence and continuous physical presence.

The director determined that the letters from Reverend [REDACTED] and Ms. [REDACTED] raised questions to their credibility as the applicant had departed the United States and last returned on November 8, 2012. The director also determined that the bank and school records submitted only served to establish the applicant's physical presence in the United States since November 2012. The director concluded that based on the applicant's last entry on November 8, 2012, the applicant had not established continuous residence since January 12, 2011, and continuous physical presence in the United States since July 23, 2011. Accordingly, the director also denied the application on these grounds.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, counsel submits additional copies of the applicant's Form I-94 and passport along with:

- A letter with English translation from [REDACTED] a doctor in Haiti, who indicated that the applicant was examined by him during June 2012 to the end of October 2012 for food poisoning.
- A letter with English translation from the applicant withdrawing his position effective August 12, 2011 as a supervisor at the [REDACTED]
- A letter with English translation from [REDACTED] of Haiti, who indicated that the applicant departed the United States to Haiti on May 30, 2012 to attend the funeral of his grandfather.

The documents submitted on appeal have no probative value as they do not serve to establish that the applicant was residing in the United States on January 12, 2011 and was physically present in the United States on July 23, 2011. As previously noted, the applicant departed on July 7, 2010 and did not enter the United States again until September 22, 2011. The applicant's visits to the United States in 2008, 2009, 2010 and 2011 only serve to establish that the applicant was present in the United States during the duration of his visits; they do not establish *continuous* residence or *continuous* physical presence in the United States.

As the applicant was not in the United States on January 12, 2011 and July 23, 2011, he cannot establish continuous residence and continuous physical presence, respectively. Therefore, he has failed to establish that he has met the criteria described in 8 C.F.R. § 244.2 (b) and (c). Consequently, the TPS application must be denied on these grounds as well.

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.