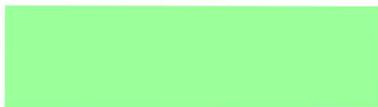




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: OCT 04 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

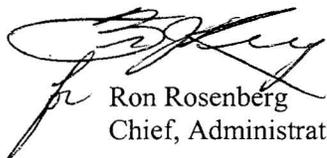
ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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,



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 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 asserts that she entered the United States on April 21, 2011, departed on June 16, 2011 to visit her relatives who were victims of the earthquake, and reentered on August 26, 2011. The applicant states, “[a]lthough I was not qualified for the initial registration which period was on May 19, 2011 through November 15, 2011. And since the registration period would end on November 15, 2011, I became eligible at least for that registration period.” The applicant requests that due to the conditions in her native country, Haiti, her application be reconsidered. The applicant submits copies of documents that were previously provided.

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 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 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 December 17, 2012. Along with her TPS application, the applicant submitted copies of: a) the biographical pages of her Haitian passport and her U.S. visa issued on March 24, 2011 in Port Au Prince, Haiti; b) her Haitian identification card; c) birth certificate with English translation; d) her Form I-94, Arrival-Departure Record, which reflected she was admitted into the United States on August 26, 2011, as a nonimmigrant visitor; e) the U.S passport and birth certificate of her child born on October 16, 2011; and f) earnings statements for the periods ending September 5, 2012 through October 3, 2012.

The visa page also has an entry stamp admitting the applicant into the United States as a nonimmigrant visitor on April 25, 2011.

On April 8, 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 evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the requisite periods.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on May 3, 2013.

The provisions for late registration detailed in 8 C.F.R. § 244.2(f)(2) 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). Consequently, the director's decision to deny the application for TPS on this ground 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.

As stated above, the applicant was requested on April 8, 2013 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, provided the following:

- An affidavit from [REDACTED] Florida, who indicated that she has known the applicant since 1992 in Haiti. The affiant indicated that the applicant “last entered the United States on April 21, 2011 and she has a child born in the U.S at [REDACTED] hospital on October 16, 2011.” The affiant indicated that she has remained in contact with the applicant since her entry into the United States.
- A residential lease agreement entered into on April 27, 2011 for premises at [REDACTED] Florida.
- An additional copy of the biographical page of her U.S. visa and her child’s birth certificate.
- Medical documents relating to the birth/discharge of her child.
- A billing statement dated September 18, 2012, for services rendered on October 13, 2011, from [REDACTED] Alabama.
- Medical documents from [REDACTED] dated August 30, 2011.

The director determined that the affidavit from Ms. [REDACTED] raised questions to its credibility as it was conflicting in nature and failed to address the applicant’s subsequent departure from the United States. The director determined that the evidence submitted only serves to establish the applicant’s physical presence in the United States since August 2011. The director concluded that the applicant had failed to submit sufficient evidence to establish her continuous residence and continuous physical presence in the United States and denied the application.

The applicant’s statements on appeal have been considered. However, as the applicant’s initial arrival into the United States was subsequent to the eligibility period, she cannot meet the criteria for continuous residence in the United States since January 12, 2011. Likewise, the applicant cannot establish continuous physical presence in the United States since July 23, 2011 as she was not in the United States on that date. Further, the applicant has not shown that her absence of 71 days (June 16, 2011 through August 25, 2011) was brief, casual, and innocent absence or that said trip abroad was required by emergency or extenuating circumstances outside her control. 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.