



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **SEP 03 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,


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 he 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 asserts that he has been “living in the United States since February 7th, 2010, did a brief trip in April, and come back on May 1st, 2011.” The applicant states, “[t]he law allows an exception to the continuous physical presence and continuous residence requirements for brief, casual and innocent departures from the United States.” The applicant indicates at Part 2 on the appeal form that he was not submitting a supplemental brief and/or evidence. Therefore, the record must be considered complete.

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.

An alien shall not be eligible for TPS if the Attorney General, now the Secretary, Department of Homeland Security (Secretary), finds that the alien was firmly resettled in another country prior to arriving in the United States. Sections 244(c)(2)(B)(ii) and 208(b)(2)(A)(vi) of the Act.

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.

As defined in 8 C.F.R. § 208.15, an alien is considered to be firmly resettled if, prior to arrival in the United States, he or she entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement unless he or she establishes:

- (a) That his or her entry into that country was a necessary consequence of his or her flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that country; or
- (b) That the conditions of his or her residence in that country were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled. In making his or her determination, the asylum officer or immigration judge shall consider the conditions under which other residents of the country live; the type of housing, whether permanent or temporary, made available to the refugee; the types and extent of employment available to the refugee; and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation that includes a right of entry or reentry, education, public relief, or naturalization, ordinarily available to others resident in the country.

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).

At the time the applicant filed his TPS application, he provided no evidence to establish continuous residence and continuous physical presence in the United States during the requisite periods. The applicant claimed on the TPS application to have entered the United States on February 7, 2010, and to have resided in the United States since that time.

On February 7, 2012, the applicant was advised that the record indicated that he had resided in the Bahamas prior to entering the United States; that his U.S. visas were issued in the Bahamas on August 4, 2000 and April 3, 2008; and that he claimed citizenship and residence in the Bahamas. The applicant was requested to provide his addresses for three years prior to his entry into the United States. The applicant was informed that if he had resided in another country other than Haiti prior to entering the United States, he was to provide an explanation of his immigration status in that country; whether he had lawful permission to be in that country; whether the permission was temporary or permanent; the reasons for being in that country; the reason for leaving; whether he was a refugee from another country; whether he had the same privileges provided to other persons who lived permanently in the country; and reasons why he did not consider himself to have been firmly resettled in the country other than Haiti before entering the United States.

The applicant was requested to submit copies of all his passports showing entries and departures; records establishing citizenship of any other country than Haiti, and visas, residence cards or other immigration documents from any country other than the United States where he had resided.

The applicant was also 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 applicant was informed that if he 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 his control, he was to submit evidence to support the absence.

The applicant, in response, provided:

- A letter dated February 22, 2012, from [REDACTED] owner of [REDACTED] in Miami, Florida, who indicated that the applicant has been enrolled in his computer class since September 2010, and is currently taking computer technician courses.
- A photocopy of the cover page and biographical page of his Haitian passport which was issued on September 20, 1995 and expired on September 19, 2000.

The director determined that the letter from [REDACTED] did not establish the applicant's presence in the United States since September 2010 or that he had been enrolled at the training center as USCIS records indicated that the applicant entered the United States on May 1, 2011. The director concluded that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on May 11, 2012.

The applicant's assertion that his only departure since his February 7, 2010 arrival was in April and that he returned on May 1, 2011 is not supported by the record. USCIS records reflect the applicant's entries and exits as follows:

<u>Entries</u>	<u>Exits</u>
February 7, 2010	May 31, 2010
August 23, 2010	December 9, 2010
January 22, 2011	March 31, 2011
May 1, 2011	

The applicant was not residing in the United States on January 12, 2011 and has not provided any credible evidence to support a claim of continuous residence. The applicant has also not provided any credible evidence to support a claim of continuous physical presence in the United States since July 23, 2011. Therefore, he has failed to establish that he has met the criteria described in section 244(c)(1)(A)(i) and (ii) of the Act and the related regulation at 8 C.F.R. § 244.2 (b) and (c). The applicant has also failed to provide the requested information regarding his residence in the Bahamas prior to entering the United States, as well as photocopies of his expired and current passports, a list of addresses for three years prior to entering the United States and evidence establishing that his absences were brief, causal and innocent as outlined in the director's notice of February 7, 2012. 8 C.F.R. § 244.9(a). Consequently, the director's decision to deny the application on these grounds 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.