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



U.S. Citizenship  
and Immigration  
Services

DATE: **SEP 27 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: 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.

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 sustained.

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 evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the requisite periods. The applicant requests that her application be reconsidered and approved as she has a family to support.

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. The designation of TPS for Haiti has been extended several times, with the latest extension valid 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 applicant filed her TPS application on November 7, 2012. Along with her TPS application the applicant submitted evidence to establish her identity and nationality and:

- Photocopies of Notices of Action, Form I-797, relating to the filing of a Form I-485, Application to Register Permanent Residence or Adjust Status, Form I-130, Petition for Alien Relative, and Form I-765, Application for Employment Authorization, dated in July 2010 and October 2011.
- A Request for Evidence dated October 10, 2011 relating to her Form I-485.
- A Florida marriage certificate indicating the applicant was married on November 15, 2009.
- A bank statement dated April 12, 2012, addressed to her and her spouse from Bank of America indicating that their savings account had been opened on November 8, 2010.

On January 4, 2013, 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, in response, provided:

- Original Notices of Action dated in July 2010.
- The biographical page of her U.S. visa issued on May 29, 2009.
- Employment authorization card (C09) valid from September 27, 2010.
- A letter dated October 15, 2010, from the Social Security Administration.

The director determined that the evidence submitted was not sufficient to establish her eligibility for TPS and denied the application on March 15, 2013. On appeal, the applicant submits:

- An uncertified Form 1040, U.S. Individual Income Tax Return, for 2010.
- A statement from Bank of America dated January 21, 2011 indicating that an incentive reward had been deposited into her account on January 10, 2011.
- Bank statements from Bank of America for November 2010.
- A Form I-693, Report of Medical Examination and Vaccination Record, dated December 29, 2011.

The AAO has reviewed the documents that supported the applicant's Form I-485<sup>1</sup> specifically, monthly bank statements from Bank of America from February 1, 2011 through February 1, 2012, and a lease agreement entered into on February 1, 2011, for property at [REDACTED] Pompano Beach, Florida. These documents coupled with the evidence submitted throughout the TPS proceedings are substantive to support a finding of continuous residence and continuous physical presence described in 8 C.F.R. 244.2(b) and (c). Accordingly, the director's decision to deny the application on these grounds will be withdrawn, and the application will be approved.

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 met this burden.

**ORDER:** The appeal is sustained

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<sup>1</sup> The Form I-485, filed October 3, 2001, was denied on February 11, 2013.