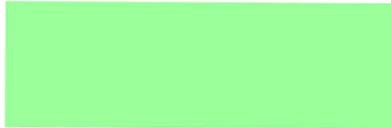


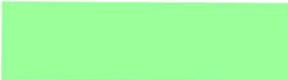


U.S. Citizenship
and Immigration
Services

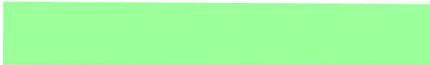
(b)(6)



DATE: **APR 09 2014** 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. 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 withdrew TPS because the applicant failed to establish he had continuously resided in the United States since January 12, 2011.

On appeal, the applicant asserts that he never withdrew his applications for TPS and employment authorization. The applicant states that both applications were timely filed. The applicant requested that the director's decision be reconsidered so that he can be reunited with his spouse, a TPS registrant. The applicant re-submits Form I-797C, Notice of Action, regarding the approval of TPS of an individual the applicant claims to be his spouse.

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 January 22, 2016, 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 *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012).

The applicant filed his initial TPS application [REDACTED] on July 6, 2011. On March 13, 2012, the Director, Nebraska Service Center, denied the application as the applicant failed to establish continuous residence in the United States since January 12, 2011 and failed to maintain physical presence in the United States due to his absence of approximately eight months from August 15, 2010 to April 21, 2011. No appeal or motion was filed from the denial of that application.

The record contains a copy of the biographical page of the applicant's U.S. visa, which reflects that the applicant was last admitted into the United States on April 21, 2011.¹

The applicant filed the current TPS application on December 4, 2012, and indicated that he was re-registering for TPS or renewal of temporary treatment benefits. On April 12, 2013, the application was approved.

In a notice dated June 27, 2013, the applicant was advised that the current application was approved in error. The applicant was informed that because he was never granted TPS, he was not eligible to re-register for TPS and, therefore, the approval of TPS would be withdrawn. The applicant was also informed that no evidence had been submitted to support a late initial filing. The applicant was granted the opportunity to submit evidence to overcome the director's findings. The applicant, in

¹ The biographical visa page also contains admittance stamps of July 20, 2007, March 3, 2008 and January 12, 2009.

response, asserted, that the designation of TPS for Haiti “enable my wife to reside in the United States and make it our residence since April 15, 2010.” The applicant asserted that on August 15, 2010, he returned to Haiti due to his child’s illness; that subsequent to his child’s medical recovery, he returned to the United States on April 21, 2011; that he is eligible for TPS as he has maintained continuous physical presence since his reentry on April 21, 2011. The applicant submitted Form I-797C, Notice of Action, regarding the grant of TPS and employment authorization to [REDACTED]

The director determined that the applicant had not established that he was married to [REDACTED] as a marriage certificate had not been provided and, therefore the Form I-797C had no probative value. The director further determined that even if the applicant had provided a marriage certificate indicating that [REDACTED] was his spouse, he still would be required to meet the remaining requirements in order to be eligible for benefit sought. The director concluded that the applicant had not established that he met the requirement for continuous residence in the United States. Accordingly, on November 6, 2013, the director withdrew TPS.

The applicant’s statements on appeal have been considered. Although the applicant was informed that without the submission of a marriage certificate he could not claim marriage to a TPS registrant, the applicant, on appeal, has not provided the certificate. Further, the applicant has not provided credible evidence to demonstrate that his eight-month absence was brief, casual and innocent. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

As the applicant was not in the United States on January 12, 2011, he cannot establish continuous residence in the United States. The regulation does not relax the requirements for eligibility for TPS. The applicant is still required to meet the residence requirement as provided in 8 C.F.R. § 244.2(c). As provided in 8 C.F.R. § 244.14(a)(1), the director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted. Consequently, the director's decision to withdraw TPS will be affirmed.

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.