



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JAN 22 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 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 qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant asserts that the director's decision contains inconsistencies as he: (1) never received any notice for further evidence regarding his initial TPS application; and (2) has not departed the United States since entering on April 21, 2011. The applicant states that because he departed a U.S. territory, St. Thomas, on February 18, 2012, to "another U.S. territory," Key West (Florida), he has never left the United States, and therefore, has maintained continuous physical presence.

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 parole; 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 first issue to be addressed 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 [REDACTED] on August 1, 2011. On February 23, 2012, the director denied the application as the evidence in the record failed to establish continuous residence since January 12, 2011 and continuous physical presence since July 23, 2011 in the United States. No appeal was filed from the denial of that application.

The applicant filed the current TPS application on November 27, 2012, and indicated that he was re-registering for TPS or renewal of temporary treatment benefits.

The re-registration period is limited to individuals: 1) whose applications have been granted; 2) whose applications remain pending; or 3) who did not file during the initial registration period and meet any of the criteria under the late initial registration provisions described in 8 C.F.R. § 244.2(f)(2).

The applicant was ineligible to file a re-registration application as the initial TPS application had been denied and he did not have a TPS application that remained pending. Therefore, the director considered the application under the late registration provisions described in 8 C.F.R. § 244.2(f)(2).

On February 15, 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 a copy of his Haitian passport and a copy of his Form I-94, Arrival-Departure Record, which reflected that he was admitted into the United States on April 21, 2011, as a nonimmigrant visitor for business.

The director in denying the application, indicated that the applicant's non-immigrant status had expired on October 20, 2011 and that no evidence was submitted to indicate that his status has been extended. The director further indicated that the applicant's non-immigrant status could not grant him eligibility to file an application under the late initial provisions because a TPS application was not filed within the 60 days following the expiration of his status. 8 C.F.R. § 244.2(g). The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on June 13, 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 did not file the current application during the initial registration period of the re-designation for Haiti or during the allotted 60-day late registration period described in 8 C.F.R. § 244.2(g). The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2) and (g). 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 his continuous residence in the United States since January 12, 2011, and his continuous physical presence in the United States since July 23, 2011.

The applicant submitted:

- A copy of a document from the Immigration Department of the Government of the British Virgin Islands date stamped April 2, 2011, which indicates that it was in receipt of the applicant's passport, and that the applicant was scheduled to depart on April 3, 2011.
- Boarding passes from [REDACTED], the applicant travelled at 3:45 p.m. from St. Thomas (U.S. Virgin Islands) to San Juan (Puerto Rico) and at 5:45 p.m. from San Juan (Puerto Rico) to Santo Domingo (Dominican Republic).
- Boarding passes from [REDACTED], the applicant travelled at 12:50 p.m. from Santo Domingo (Dominican Republic) to San Juan (Puerto Rico) and at 4:40 pm from San Juan (Puerto Rico) to St. Croix (U.S. Virgin Islands).
- A copy of his Haitian passport reflecting an entry stamp into and a departure stamp from the Dominican Republic on April 3, 2011 and April 21, 2011, respectively.

USCIS records reflect that in 2011 the applicant entered and departed the United States on April 3, 2011. As previously noted, the applicant also entered the United States on April 21, 2011.

On appeal, the applicant asserts that he departed St. Thomas, U.S. Virgin Islands on February 18, 2012 and arrived at the Miami International Airport (Florida) on the same day. As evidence, the applicant provides his passenger receipt and boarding pass from [REDACTED] 2012. The boarding pass indicates that the applicant travelled from San Juan (Puerto Rico) to Miami International Airport.

The applicant also submitted:

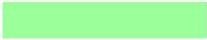
- A letter dated March 26, 2013, from [REDACTED] who indicated that the applicant attended its church from May 19, 2011 through November 15, 2011.
- A letter dated March 5, 2013, from a representative of [REDACTED] Florida, who attested to the applicant's employment as a houseman since March 24, 2012.
- A Wage and Tax Statement, Form W-2, for 2012,
- A undated statement from administrator [REDACTED], who indicated that the applicant was enrolled in the [REDACTED] Virgin Islands from 2010 to 2012.
- A letter dated April 30, 2013, from a representative of [REDACTED], who indicates that the applicant opened an account on March 12, 2012.
- Several rent receipts dated from July 2011 through November 2011 and January 3, 2012.

The above documents have little probative value or evidentiary weight as: 1) the rent receipts did not list an address and were not corroborated by the individual who signed them; 2) no corroborating evidence was submitted to support the letter from [REDACTED] and 3) the letter from [REDACTED] does not conform to the basic requirements specified in 8 C.F.R. § 244.9(a)(2)(v). Most importantly, the pastor does not explain the origin of the information to which he attests. 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). It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided

Based on the applicant's claim on his TPS application to have entered the United States on April 21, 2011 along with USCIS records corroborating said entry, the applicant has failed to establish continuous residence in the United States since January 21, 2011. The applicant has also failed to submit sufficient evidence to establish continuous physical presence in the United States since July 23, 2011. The applicant has, therefore, failed to establish that he 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.

Finally, while not the basis for the dismissal of this appeal, it must be noted that the applicant's assertion that he did not receive any notice for further evidence in regards to his initial TPS application is without merit. The record reflects that the applicant did receive a notice dated December 2, 2011, as USCIS received a response on February 17, 2012. As stated in that denial



notice, the evidence submitted was not sufficient to establish continuous residence and continuous physical presence in the United States during the requisite periods.

ORDER: The appeal is dismissed.