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

U.S. Citizenship and Immigration Services

DATE: JAN 2 2 2014 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:

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 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, counsel asserts that the director's decision is erroneous as the applicant is a spouse of an alien currently eligible to be a TPS registrant. Counsel states that the applicant entered the United Stateson December 19, 2010 and that except for a few visits to Haiti, he has been continuously physically presence in the United States. Counsel submits additional evidence in an attempt to establish the applicant's continuous residence and continuous physical presence during the requisite periods.

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).

Contrary to counsel's assertion on appeal, the application was not denied on the basis that the applicant had not established late registration under section 8 C.F.R. § 244.2(f)(2)(iv). Rather, the primary basis for the denial was the applicant's failure to establish continuous residence and continuous physical presence in the United States during the requisite periods.

While regulations may allow TPS beneficiaries to file their applications after the initial registration period had closed; these regulations do not relax the requirements for eligibility for TPS. The individual is still required to meet the residence and physical presence requirements as provided in 8 C.F.R. §§ 244.2(b) and (c).

USCIS records reflect that the applicant, as a nonimmigrant visitor, has entered and departed the United States on numerous occasions since 2002. Specifically, since the latter part of 2010 USCIS records reflect the following entries and departures:

Entry date	Departure date
December 19, 2010	January 5, 2011
April 11, 2011	April 25, 2011
September 17, 2011	September 18, 2011
September 24, 2011	September 25, 2011
October 30, 2011	November 20, 2011
December 22, 2011	January 16, 2012

March 9, 2012

The record also contains copies of the applicant's previous and current Haitian passports that corroborate the above entries into the United States.

On March 28, 2013, the applicant was 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 the following:

- Copies of approval notices (Form I-797) and employment authorizations cards (category A12) of his spouse and daughters.
- His daughters' Haitian birth certificates with English translations.
- His marriage certificate with English translation, which occurred on June 4, 1998.
- His son's Massachusetts birth certificate.

The director determined that USCIS records reflect that the applicant had last entered the United States on March 9, 2012, and that there was no evidence in the record demonstrating that the applicant was continuously residing and was continuously physically present in the United States prior to March 9, 2012. The director concluded that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on June 21, 2013.

As evidence to establish the applicant's continuous physical presence in the United States, counsel, on appeal, asserts that she is submitting a "computer printout of Petitioner bank statement" that lists transactions from 2011.

This printout, listing transactions from November 26, 2011 through December 16, 2011, has no probative value or evidentiary weight as the applicant was not in the United States during that period. As noted above, USCIS records reflect that the applicant departed the United States on November 20, 2011 and reentered on December 22, 2011. Further, the applicant's passport contains an entry stamp of November 20, 2011 and an exit stamp of December 22, 2011 into and out of Haiti. It is noted the "computer printout" does not include the names of the bank and the individual it is associated with.

The applicant's last arrival into the United States was subsequent to the eligibility period. His visits to the United States in 2010 and 2011 only serve to establish that he was present in the United States during the duration of his visits; they do not establish *continuous* residence or *continuous* physical presence in the United States. As the applicant was not in the United States on January 12, 2011 and July 23, 2011, he cannot meet the criteria for continuous residence and continuous physical presence as 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 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.