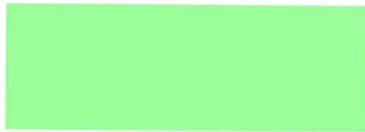




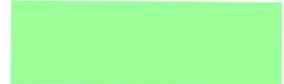
U.S. Citizenship
and Immigration
Services

(b)(6)

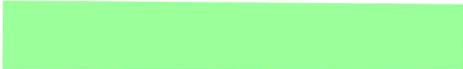


DATE: **MAR 21 2014**

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 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 provided a copy of his deed which establishes his primary residence in the United States. The applicant states that “the physical presence of my wife and my children in the home ... determine that I am physically presence in that same residence.” The applicant requests reconsidered of his TPS application.

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 applicant filed his TPS application on October 15, 2013, and it was accepted under the late initial filing provision of 8 C.F.R. § 244.2(f)(2)(iv). The applicant indicated on his application to have resided in the United States since April 24, 1994.

USCIS records, however, dispute the applicant's claim. The record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated January 9, 2013, which indicates that the applicant applied for admission into the United States from Mexico at the [REDACTED] port of entry. The applicant was referred to secondary inspection, where he was placed under oath and in a sworn statement admitted that he departed his native country, Haiti, on December 25, 2012,¹ travelling through El Salvador, Belize and Mexico before arriving at the United States port of entry; that he resided in the United States from 1994 to 2009 in [REDACTED]; that he was employed in the United States as a truck driver and at a carwash; that he had received a letter of deportation, but has never been arrested or deported;² and that while working in Haiti he was given TPS.

On December 3, 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 director noted that the applicant had indicated that he was not present in the United States from October 31, 2009 through his reentry on January 9, 2013. The applicant was

¹ The applicant's passport confirms this departure from Haiti.

² The record reflects that a removal hearing was held on March 10, 1998, and the alien was ordered removed *in absentia*.

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 copy of his temporary driving permit issued on March 8, 2013.
- Several earnings statements issued in his name in 2013.
- A letter from [REDACTED] indicating that the applicant opened an account on February 20, 2004, that is still active. A banking history from September 2013 to December 2013 was provided.
- An affidavit dated December 9, 2013, from [REDACTED] who attested to the applicant's residence of eight years in the state of Florida. The affiant indicated that he has regularly visited the applicant at his former ([REDACTED]) residences.
- An affidavit notarized December 10, 2013, from [REDACTED] who indicated that he has known the applicant for over 35 years and attested to the applicant's former ([REDACTED]) residences.
- A marriage certificate, which occurred in Haiti on March 24, 1994.
- A letter from [REDACTED], owner and landlord, who indicated that the applicant and his wife were tenants at [REDACTED] from August 15, 2006 through October 31, 2009. The landlord also indicated that the applicant's wife and children continued to occupy the premises and paid rent from November 1, 2009 through July 15, 2011.
- A copy of a warranty deed and mortgage documents relating to the purchase of a property at [REDACTED] dated June 28, 2011. It is noted that the applicant's name is not included on the documents; only the name of the applicant's spouse.
- An affidavit from the applicant's spouse indicating that in 2011 she had informed the realtor that the applicant was in Haiti, and that she was not aware that the applicant's name was not included in the transaction. The spouse requested that the applicant be granted TPS.
- An earnings statement and several bank statements addressed to the applicant's spouse from June 17, 2011 through May 11, 2012.
- Form 1040, U.S. Individual Tax Return, for 2011 and 2012.

The remaining evidence is dated prior to eligibility period in question or in the name of the applicant's spouse and has no bearing in this proceeding.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS as, by his own admission, he was not present in the United States from October 31, 2009 until his reentry on January 9, 2013. Accordingly, the director denied the application on January 14, 2014.

The income tax returns for 2011 and 2012 have no evidentiary weight or probative value as they were not certified as being filed. *See* 8 C.F.R. § 244.9(a)(2)(i). The applicant has not provided any credible evidence to support his claim that while in Haiti he was given TPS. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant's statements on appeal have been considered. However, evidence in the record clearly indicates that the applicant was not physically present in the United States in 2011. As the applicant's last arrival into the United States was subsequent to the eligibility period, he cannot establish continuous residence since January 12, 2011 and continuous physical presence since July 23, 2011, as described in 8 C.F.R. § 244.2 (b) and (c). Consequently, the director's decision to deny the application for TPS 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.