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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: AUG 1 8 2015

FILE #:
APPLICATION RECEIPT #:

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:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and 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. § 1254a. On November 10, 2014, the director denied the application because the applicant failed to establish continuous residence since January 12, 2011, and continuous physical presence since July 23, 2011 in the United States.

On appeal, counsel asserts that the applicant's trips outside of the United States were brief, casual, and innocent because the applicant traveled to Haiti to take care of her mother who was injured during the earthquake.

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, as defined in section 101(a)(21) of the Act, of a foreign 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. *Id.*

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. *Id.*

The term brief, casual and innocent absence, as defined in 8 C.F.R. §244.1, means a departure from the United States that satisfies the following criteria:

(1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;

(2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and

(3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

The Secretary designated (January 21, 2010) and redesignated (July 23, 2011) Haiti as a country eligible for TPS. Under the redesignation persons applying for TPS offered to Haitian (and persons without nationality who last habitually resided in Haiti) must demonstrate that they have continuously resided in the United States since January 12, 2011, and that they have been continuously physically present in the United States since July 23, 2011. The TPS designation has been extended several times, with the latest extension granted until January 22, 2016, upon the applicant's re-registration during the requisite 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. 8 C.F.R. § 244.9(b). To meet this burden of proof the applicant must provide supporting documentary evidence of eligibility apart from the applicant's own statements. *Id.*

We conduct appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The applicant filed this TPS application on June 30, 2014. The applicant indicated on the application that she last entered the United States on July 4, 2012.

USCIS records reflect that the applicant, as a nonimmigrant visitor, has entered and departed the United States on several occasions since 2008. Since TPS has been designated for Haiti, USCIS records reflect the following admissions and departures:

Departure date	Admission date
October 5, 2009	March 1, 2010
March 14, 2010	April 20, 2010
April 27, 2010	July 22, 2010
January 11, 2011	April 20, 2011
May 2, 2011	December 23, 2011
January 7, 2012	July 4, 2012

Based on the pattern of visits, the director determined that it appeared the applicant was not residing in the United States. In a Request for Evidence dated July 24, 2014, the applicant was requested to submit evidence establishing continuous residence since January 12, 2011 and continuous physical presence since July 23, 2011 to the date of filing. The applicant was informed that if she 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 her control, she was to submit evidence to support the absence.

In response, counsel asserted that the applicant traveled to and from the United States to take care of her mother who had been severely injured in the earthquake in January 2010. Counsel asserted that the applicant requested documentation from Haiti regarding her frequent trips due to her mother's health. Counsel submitted statements from the applicant and affiants and other documents in an attempt to establish the applicant's continuous residence and continuous physical presence during the requisite periods. In her statement, the applicant, asserted that she planned to stay in the United States to take care of her son, who was living with his father, but traveled to Haiti because of the legality of her immigration status. The applicant also asserted that she was employed as a secretary at the in Haiti prior to the earthquake and had to provide financial contributions to her husband and son to assist with the rent.

The director determined that the statements from the applicant and the affiants failed to address the applicant's lengthy absences between her visits from the United States. The director also determined that the remaining documents had little probative value as they were dated subsequent to the period to establish continuous residence since January 12, 2011 and continuous physical presence since July 23, 2011 in the United States. As such, the director further determined that the applicant's failure to maintain continuous residence and continuous physical presence during the requisite periods was not due to brief, casual, and innocent absence(s) or a brief temporary trip abroad required by emergency or extenuating circumstances beyond her control.

On appeal, counsel submits a medical certificate issued on November 15, 2010, with English translation, from a representative for Haiti, indicating that received treatments and therapies after receiving injuries following the earthquake.

As the medical certificate was issued on November 15, 2010, it does not address the applicant's absences from the United States during the relevant time periods, in 2011 and 2012. The applicant, in her submitted statement, does not indicate that her trips to Haiti involved her mother's injuries in the January 2010 earthquake. As noted, the applicant stated that she returned to Haiti due to her immigration status. Further, as the record does not contain the required English translation of the applicant's birth certificate, it has not been established that the individual indicated in the medical certificate is the applicant's mother. 8 C.F.R. 103.2(b)(3).

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and

attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The absences outside the United States cannot be considered to be brief, casual and innocent as the applicant has failed to establish that her absences from the United States during the periods in question can be so categorized. The applicant's visits to the United States since 2011 can only serve to establish that the applicant was present in the United States during the duration of her visits; they do not establish *continuous* residence or *continuous* physical presence in the United States. Further, the record indicates that the applicant was not in the United States on January 12, 2011 or July 23, 2011. 8 C.F.R. § 244.2 (b) and (c). The director's decision to deny the application for TPS on these grounds will be affirmed.

An application that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d at 145.

To meet the initial registration requirements for the redesignation in 8 C.F.R. § 244.2(f)(1), Haitian applicants must have filed TPS applications during the initial registration period, May 19, 2011, through November 15, 2011. If applicants did not file their initial TPS applications during this time period, they must meet the late registration requirements as stated above in 8 C.F.R. § 244.2(f)(2). Specifically, to qualify for late registration, the applicant must provide evidence that during the initial registration period for redesignation (May 19, 2011 through November 15, 2011) the applicant fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2). 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).

It appears that this application was accepted under the late registration provisions described in 8 C.F.R. § 244.2(f)(2)(iv). A review of the record, however, does not reflect that the applicant is a spouse of an alien currently eligible to be a TPS registrant as this provision has not been credibly established. The record does not contain a copy of the applicant's Haitian marriage certificate, only an English translation was submitted. As such, the evidence of record does not establish that the applicant has met any of the remaining provisions for late registration described in 8 C.F.R. § 244.2(f)(2). Therefore, we find that the applicant is also ineligible for TPS based upon her failure to establish eligibility for late registration.

The appeal is dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal. In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.