



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 01 2015

FILE: [REDACTED]

APPLICATION RECEIPT#: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254a

ON BEHALF OF APPLICANT:

NO REPRESENTATIVE OF RECORD

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 Director, California Service Center, denied the applicant's Temporary Protected Status. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Haiti, is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a. On September 20, 2014, the director denied the application because the applicant failed to establish that she had continuously resided in the United States since January 12, 2011, and had been continuously physically present in the United States since July 23, 2011.

On appeal, the applicant states that the following grounds of inadmissibility under sections 212(a)(4), 212(a)(5), and 212(a)(7)(A)(i) of the Act do not render her ineligible for TPS. The applicant requests that the director reconsider the decision to deny her application and grant her TPS based on family unity and family hardship. The applicant indicates that that her brief and/or additional evidence will be submitted to the AAO within 30 calendar days of filing the appeal. As of the date of this decision, no brief or additional evidence has been received from the applicant. We will consider the record complete and adjudicate the appeal based on the evidence of record.

Applicable Law

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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; 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 reparole; or
- (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

As used in 8 C.F.R. § 244.1, the term *continuously physically present*, 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. 8 C.F.R. § 244.1.

The term *continuously resided*, 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.

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.¹

To qualify for late registration, the applicant must provide evidence that during the initial registration period she 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 burden of proof is upon the applicant to establish that he or she meets the above requirements. 8 C.F.R. § 244.9(a)(3). 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 his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. *Id.*

Facts and Procedural History

The applicant is a native and citizen of Haiti who last entered the United States on December 19, 2011, with a B-2 nonimmigrant visa and has remained in the country since that date.² The applicant filed her initial application for TPS on April 4, 2014. On May 19, 2014, the applicant was requested to submit evidence of her eligibility for late registration and evidence of her continuous residence and continuous physical presence in the United States during the requisite periods. 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(s). The applicant timely responded with additional evidence. The director found the evidence insufficient to establish the applicant's continuous residence and continuous physical presence in the United States during the requisite periods.³ The director denied the TPS application accordingly. The applicant timely filed an appeal of the director's decision to deny TPS.

¹ On March 3, 2014, the Secretary announced an extension of the TPS designation for Haiti until January 22, 2016, upon the applicant's re-registration during the requisite time period.

² The record reflects that the applicant had previously entered the United States with a B-2 nonimmigrant visa on three occasions: July 8, 2008 through August 29, 2008; July 6, 2010 through September 15, 2010; and September 21, 2011 through September 29, 2011.

³ The director accepted the application for a late initial registration because the applicant met the requirements under 8 C.F.R. § 244.2(f). She is the child of an alien eligible for TPS because her mother is a Haitian national in current TPS status.

Analysis

The regulation at 8 C.F.R. § 244.9(a)(2) provides an illustrative list of evidence the applicant is required to submit as proof of residence in the United States during the requisite period of time however, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 244.9(a)(2)(L).

The evidence that the applicant submits in support of her claim that she has continuously resided in the United States and has been continuously physically present in the United States during the requisite period consists of the following:

- A copy of her Haitian Passport, bearing a United States nonimmigrant B-2 visa issued in [REDACTED] Haiti on May 2, 2008, with admission stamps into the United States on July 8, 2008, July 6, 2010, September 21, 2011, and December 19, 2011. The passport also bears exit and entry stamps from the Republic of Haiti immigration indicating her entries into Haiti and exits from Haiti as follows: exit July 8, 2008 and entry August 29, 2008; exit July 6, 2010 and entry September 15, 2010; exit September 21, 2011 and entry September 29, 2011, and exit December 19, 2011 and no corresponding entry stamp into Haiti; and
- Copies of school records from the [REDACTED] for the 2011-2012 and 2012-2013 school years and records from [REDACTED] Florida, for the 2013-2014 school year.
- A copy of a high school diploma from [REDACTED] dated May 31, 2014.

The evidence of record indicates that the applicant last entered the United States on December 19, 2011, and has continuously resided in the United States since that date. As noted above, the Secretary re-designated Haiti for TPS eligibility effective on July 23, 2011, allowing 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. In this case, the applicant last entered the United States subsequent to the qualifying periods required to establish continuous residence and continuous physical presence. Although she previously entered the United States with a B2 visa in 2008 and 2010, she did not begin residing in the United States before January 12, 2011, but visited for approximately two months on both occasions and then returned to Haiti. Even if she were found to have resided in the United States after her July 2010 entry, she departed the United States on September 15, 2010, and returned on September 21, 2011, an absence of over one year. She returned to Haiti on September 29, 2011, and again entered the United States on December 21, 2011, nearly three months later. The applicant has not shown that her absences were brief, casual, and innocent or that these trips abroad were required by emergency or extenuating circumstances outside her control.

The applicant's eligibility for late initial registration under 8 C.F.R. § 244.2(f) does not exempt her from meeting the other eligibility requirements for TPS set forth in subsections (a) through (e). See *Matter of Echevarria*, 25 I&N Dec. 512, 518-19 (BIA 2011). As the applicant has not

continuously resided in the United States since January 12, 2011, and was not physically present in the United States since July 23, 2011, she cannot establish the requisite continuous residence and continuous presence as described in 8 C.F.R. § 244.2(b).

On appeal, the applicant cites 8 C.F.R. § 244.3 and refers to grounds of inadmissibility that do not apply to TPS applicants pursuant to that regulation. The applicant also refers to a waiver of certain other grounds of inadmissibility pursuant to Section 244(c)(2) of the Act in the interest of family unity and other humanitarian grounds and requests that the director reconsider the decision to deny TPS in light of the availability of a waiver.⁴ However the director did not find the applicant inadmissible, but found the applicant ineligible for TPS because she failed to establish her continuous residence and continuous physical presence in the United States during the requisite periods. Although TPS applicants may seek a waiver for certain inadmissibility grounds, they must meet all other TPS eligibility requirements, and there is no waiver available, even for humanitarian reasons, of the continuous residence and continuous presence requirements under section 244(c)(1)(A) of the Act. *See Castillo-Enriquez v. Holder*, 690 F.3d 667 (5th Cir. 2012) (holding that children must meet physical presence and continuous residence requirements independent of their parents and finding the waiver provisions of section 244(c)(2) of the Act, by their plain terms, apply only to grounds of inadmissibility and not to any eligibility requirement under section 244(c)(1)(A) of the Act, including the physical presence and continuous residence requirements). *De Leon-Ochoa v. Att'y Gen. of the U.S.*, 622 F.3d 341, 344 (3d Cir. 2010) (recognizing that “[b]y statute” applicants for TPS must (1) be nationals of a foreign state designated for TPS and (2) meet the additional eligibility requirements set forth under section 244(c)(1)(A) of the Act); *Cervantes v. Holder*, 597 F.3d 229 (4th Cir. 2010).

As the applicant has failed to establish her eligibility for TPS as required under section 244(c) of the Act, the director’s decision to deny the application for TPS will be affirmed.

Conclusion

The burden of proof is on the applicant to establish that he or she is eligible for TPS. 8 C.F.R. § 244.9(a)(3). Here, that burden has not been met and the appeal must be dismissed.

ORDER: The appeal is dismissed.

⁴ Section 244(c)(2)(A) provides in pertinent part :

In the determination of an alien's admissibility for purposes of subparagraph (A)(iii) of paragraph (1)—

- (i) the provisions of paragraphs (5) and (7)(A) of section 212(a) shall not apply;
- (ii) except as provided in clause (iii), the Secretary may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. . . .