



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF R-C-

DATE: SEPT. 21, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

APPLICATION: FORM I-821, APPLICATION FOR TEMPORARY PROTECTED STATUS.

The Applicant, a native and citizen of Haiti, seeks Temporary Protected Status. *See* Immigration and Nationality Act (INA, or the Act) § 244, 8 U.S.C. § 1254a. The Director, California Service Center denied the application. The matter is now before us on appeal. The appeal will be dismissed.

In a decision dated July 28, 2014, the Director denied the application for Temporary Protected Status (TPS) because the applicant failed to establish continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant states that his trips to Haiti were necessitated by urgent need to close his business in Haiti and wind down his business operations. The applicant requests a humanitarian waiver for the days he was outside the United States and the approval of his TPS application because returning to Haiti will result in extreme hardship to his family in the United States.

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

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 this burden of proof the applicant must provide supporting documentary evidence of eligibility apart from the applicant's own statements. *Id.*

The record reflects that the applicant last entered the United States on September 23, 2011, with a B-2 nonimmigrant visa and had previously entered with a B-2 visa on three separate occasions during the requisite period: December 31, 2010 through January 14, 2011; May 23, 2011 through June 8, 2011; and July 20, 2011 through August 3, 2011. The applicant filed the current TPS application on February 5, 2014.² On March 25, 2014, the director requested the applicant to provide evidence of his continuous residence and continuous physical presence in the United States during the requisite periods. The director informed the applicant 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 this. 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.

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. Evidence to establish continuous residence during the requisite period may consist of: employment records; rent receipts, utility bills, or other receipts; school records; hospital or medical records; attestations by churches, unions, or other organizations of the applicant's residence; money order receipts for money sent in or out of the country; passport entries; birth certificates of children born in the United States; automobile license receipts and vehicle registration; deeds and mortgages; tax receipts; insurance policies; or additional documents to support the applicant's claim. The submission of any other relevant document is permitted pursuant to 8 C.F.R. § 244.9(a)(2)(vi)(L).

The evidence that the applicant submits in support of his application and his continuous residence and continuous physical presence in the United States during the requisite period consists of the following:

¹Subsequent extension of the TPS designation was announced by the Secretary on March 3, 2014, until January 22, 2016, upon the applicant's re-registration during the requisite time period.

² The record reflects that the applicant had filed two other TPS applications on November 10, 2012 and November 12, 2011. The applications were denied by the director because the applicant failed to establish continuous residence and continuous physical presence.

- A copy of his Haitian Passport, with admission stamps into the United States on December 31, 2010, May 23, 2011, July 20, 2011, and September 23, 2011. A copy of a Form I-94, Departure/Arrival Record showing that the applicant was admitted into the United States on September 23, 2011.
- Statement dated April 17, 2013, from the applicant's cousin stating that the applicant resided with her at her home in [REDACTED] Florida from May 2011 to December 2011.
- Two statements from a church in [REDACTED], Florida dated June 14, 2012 and April 9, 2013. The June 2012 letter states that the applicant has been a member of the church since January 2011. The April 2013 letter states that the applicant became a member of the church in December 2010.
- Statements from the applicant explaining the reasons why he travelled back and forth to Haiti on numerous occasions from December 31, 2010 through September 23, 2011.
- A statement from the applicant's business associate in Haiti concerning the applicant's trips to Haiti in 2011.
- A statement from President-Director General, [REDACTED] stating that the applicant worked as a Broker for the company from 2009 to 2011.
- A statement dated March 30, 2013, from the Assistant Principal of [REDACTED] Center stating that the applicant was registered for [REDACTED] from August 22, 2011 through December 16, 2011 and from January 5, 2012 through April 19, 2012.
- A copy of "Gradebook Student Attendance Detail" from the school indicating the periods the applicant attended classes.
- Copies of "Discharge Education Summary" from [REDACTED] Florida dated July 24, 2011 and February 12, 2012, related to the applicant's spouse.

The applicant states that his trips to Haiti were "brief, casual, and innocent" and were necessitated by urgent need to close his business in Haiti and wind down his business operations. The applicant states that he operated a food brokerage business out of his home in Haiti. He indicates that the January 12, 2010 earthquake in Haiti destroyed his home and disrupted his business. On January 20, 2010, he sent his family to the United States and he remained in Haiti to "save and secure what remained of his home and business." The applicant also states that while in Haiti, he provided financial support to his family from what he could salvage and sell. The applicant further states that he traveled to the United States in May 2010 for 15 days and returned to Haiti. He came to the United States on December 31, 2010 to spend the holidays with his family and returned to Haiti on January 14, 2011. The applicant states he came back to the United States on May 23, 2011 because his wife was sick and needed help with his children but returned to Haiti on June 8, 2011. The applicant states he returned to the United States on July 20, 2011 because his wife's health "continued to deteriorate" and she had to have surgery. The applicant states he went back to Haiti on August 3, 2011 to "close all operations" and he returned to the United States on September 23, 2011.

The evidence of record show that the applicant was in the United States on January 12, 2011 and that he was physically present in the United States on July 23, 2011, but does not establish his continuous residence and continuous physical presence during the requisite periods. Although the applicant was in the United States on January 12, 2011, the record shows that he was still residing in Haiti when he

came to the United States on a B-2 nonimmigrant visa on December 31, 2010 to visit his family for the holidays. He went back to Haiti 14 days later, on January 14, 2011, and did not return to the United States until May 19, four months later. The record does not establish that he had begun residing in the United States in or before January 2011. Furthermore, from May 2011, when the applicant's cousin states that the applicant began residing with her, to September 23, 2011, when he made his last entry into the United States, the applicant was only present in the United States for 30 days. The record does not establish that the applicant was residing in the United States before September 23, 2011.

Even if we determined that the applicant had begun residing in the United States on or before January 12, 2011, the record would not establish his continuous residence in the United States. As indicated above, 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. 8 C.F.R. § 244.1. The regulation further defines brief, casual and innocent absence as "absence that is of short duration and reasonably calculated to accomplish the purpose(s) for the absence."

The applicant has not established that his travel to Haiti during the requisite period amounts to a brief, casual, and innocent absence or a brief temporary trip abroad required by emergency or extenuating circumstances outside his control. The applicant asserts that his absences from the United States were necessitated by emergent reasons outside his control because he needed to close his business in Haiti after the earthquake of January 12, 2010 before joining his family members who were already in the United States as of January 20, 2010.

The claim by the applicant that his trips back to Haiti were necessitated by an urgent need to close his business in Haiti after the earthquake in January 2010 is not supported by the evidence in the record. The applicant was absent from the United States for 225 days during the requisite period. During this period, the evidence indicates the applicant resided and continued to operate his business in Haiti. The applicant only traveled to the United States for short periods of time to visit his family in the United States. The applicant has not provided credible evidence to show that he needed all the time he spent in Haiti to close his business or that this travel was of short duration and reasonably calculated to accomplish the purpose of closing his business and therefore brief, casual and innocent as defined in the regulation.

We note that the earthquake in Haiti was an unforeseen event outside the control of the applicant. We also acknowledge the applicant's claim that he needed time to close down his business before joining his family in the United States after the earthquake. But the applicant's 129-day absence from the United States from January 14, 2011 to May 23, 2011 does not qualify as a brief and temporary absence brought about by emergency or extenuating circumstances outside the applicant's control. The earthquake in Haiti occurred on January 12, 2010. The applicant sent his family to the United States on January 20, 2010. The applicant then traveled to the United States in May 2010 for a short period of time, returned to Haiti, and remained there until December 31, 2010, when he came

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Matter of R-C-

to the United States. The applicant has not provided credible evidence to show why he was unable to close his business during the period between January through May 2010 or from May 2010 through December 2010. The applicant's assertions on appeal that his 225-day absence from the United States in 2011 was necessitated by his urgent need to close his business after the 2010 earthquake are not supported by the evidence in the record. Other than his own statements and a statement from the owner of an import-export company in [REDACTED], the applicant has provided no independent, contemporaneous evidence to support his assertions that his absences from the United States were reasonably calculated to close down his business in Haiti.

The record does not establish that the applicant's extended absences from the United States were brief, casual, and innocent or required by emergency or extenuating circumstances outside of his control. The applicant's extended absences from the United States in 2011 therefore preclude him from establishing continuous residence and continuous physical presence during the requisite periods.

On appeal, the applicant requests a waiver for the days he was outside the United States for humanitarian reasons to avoid extreme hardship to his family. The Director found the applicant ineligible for TPS because he failed to establish his 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, 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 applicants for TPS must be nationals of a foreign state designated for TPS and 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 his 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.

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.

Cite as *Matter of R-C-*, ID# 12935 (AAO Sept. 21, 2015)