



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

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

In Re: 23395955

Date: DEC. 5, 2022

Appeal of California Service Center Decision

Form I-821, Application for Temporary Protected Status

The Applicant seeks Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a, pursuant to the Haitian TPS designation.

The Director of the California Service Center denied the TPS request, concluding that the Applicant did not establish, as required, that she that she was a citizen or national of Haiti and that she met the continuous residence and physical presence conditions under the TPS designation for Haiti.

On appeal, the Applicant submits additional evidence to overcome the Director's adverse determination.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal because the Applicant has not met this burden.

**I. LAW**

TPS applicants must provide evidence of their identity and nationality, if available. 8 C.F.R. § 244.9(a). Acceptable evidence of nationality, in descending order of preference, may consist of a passport, a birth certificate accompanied by photo identification, or any national identity document from the applicant's country of origin bearing a photo, fingerprint, or both. *Id.*

In addition, a national of a foreign state designated by the Secretary of Homeland Security must also establish, that they have been continuously physically present in the United States since the effective date of the most recent designation of that foreign state for TPS and have continuously resided in the United States since a date designated by the Secretary of Homeland Security. 8 C.F.R. § 244.2.

Individuals applying for TPS offered to Haitians (and persons without nationality who last habitually resided in Haiti) must demonstrate that they have been continuously residing in the United States since

July 29, 2021, and have been continuously physically present in the United States since August 3, 2021.<sup>1</sup>

*Continuously resided* means “residing in the United States for the entire period specified in the regulations,” but an applicant shall not be considered to have failed to maintain continuous residence “because of a brief, casual and innocent absence . . . or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the [applicant].” 8 C.F.R. § 244.1. *Continuously physically present* means “actual physical presence in the United States for the entire period specified in the regulations,” but an applicant shall not be considered to have failed to maintain continuous physical presence because of “brief, casual, and innocent absences.” *Id.*

The burden of proof is on the Applicant to demonstrate eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b).

## II. ANALYSIS

The issues on appeal are whether the Applicant has established that she is a Haitian national and, if so whether she has demonstrated that she has been continually residing in the United States since July 29, 2021, and that she has been continuously physically present in the United States since August 3, 2021. We have reviewed the entire record as supplemented on appeal and conclude that the Applicant has met her burden of proof to establish her Haitian nationality. Nevertheless, we will dismiss the appeal because the evidence remains insufficient to demonstrate that she meets the U.S. continuous residence and physical presence requirements for TPS under the Haitian designation.

The Director determined that the Applicant did not establish she was a national of Haiti (or a person without nationality who last habitually resided in Haiti) because the biographical pages of her passport were illegible. The Applicant now submits copies of her two Haitian passports issued in 2014 and 2019, her birth certificate issued by the National Archives of Haiti in 2002, and a Haitian national identity card. These documents, issued by the government of Haiti, are acceptable primary evidence of the Applicant’s identity and nationality for TPS purposes pursuant to the regulations at 8 C.F.R. § 244.9(a). The Applicant therefore has overcome the Director’s adverse determination on that issue.

The Director also found that the Applicant failed to show that she maintained continuous residence and physical presence in the United States for the entire periods specified under the Haitian TPS designation, because she did not submit the requested employment, medical, financial, or school records, rent or utility bills, and similar documents. The Applicant does not explain why she did not provide this type of documentation. Instead, she submits evidence of her entry into the United States as a nonimmigrant in June 2021, and a letter from an individual who states that the Applicant has not left the United States since that time.

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<sup>1</sup> See *Designation of Haiti for Temporary Protected Status*, 88 Fed. Reg. 41863 (Aug. 3, 2021).

Although the entry evidence shows that the Applicant was admitted to the United States in June 2021, it is inadequate to establish the continuity of her residence and physical presence in the United States since July 29, 2021, and August 3, 2021, respectively. Furthermore, the letter does not contain sufficient details to overcome the lack of primary documentation the Director requested. The writer states generally that the Applicant has been in the United States since June 2021 and that she has not left the country. However, as the statement is uncorroborated by additional evidence, such as rent receipts, utility bills, and similar records we cannot give this letter significant weight.

Consequently, the evidence remains insufficient to establish to show that the Applicant meets the continuous residence and physical presence conditions for TPS under the Haitian designation.

In conclusion, although the Applicant has established that she is a Haitian national, she has not met her burden of proof to show that she has been continuously residing and physically present in the United States during the relevant periods, as required to qualify for TPS under the 2021 Haitian designation. The Applicant therefore is ineligible for TPS, and her Form I-821 remains denied.

**ORDER:** The appeal is dismissed.