



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

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

In Re: 21841562

Date: AUG. 29, 2022

Appeal of California Service Center Decision

Form I-821, Application for Temporary Protected Status

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

The Director of the California Service Center denied the TPS request, concluding that the Applicant did not establish, as required that he met the continuous residence and physical presence conditions under the TPS designation for Haiti.¹

On appeal, the Applicant submits additional evidence and reasserts eligibility for TPS.

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 remand the matter to the Director for additional review and entry of a new decision consistent with our opinion below.

I. LAW

To be eligible for TPS, a national of a foreign state designated by the Secretary of Homeland Security must establish, in part 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, 2021.²

¹ The Director noted in the denial, as an initial matter, that the information in the record was sufficient to raise the issue of whether the Applicant has "engaged in persecution of others," as his "prior immigration records" indicated that he received arms training at the National Police Academy in Haiti. However, as the Director did not provide any further details and did not make a formal finding concerning the Applicant's ineligibility for TPS on that basis, we are unable to meaningfully address it on appeal and reserve the issue instead.

² See *Designation of Haiti for Temporary Protected Status*, 88 Fed. Reg. 41863 (Aug. 3, 2021).

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). To meet his burden of proof, the Applicant must provide supporting documentary evidence of eligibility apart from his own statements. *Id.*

II. ANALYSIS

The sole issue on appeal is whether the Applicant has demonstrated by a preponderance of the evidence that he has been continuously residing in the United States since July 29, 2021, and 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 evidence considered in the aggregate is now sufficient to establish that the Applicant meets these requirements.

The record reflects that the Applicant filed the instant TPS request in August 2021, representing that he was last admitted to the United States in December 2020 as a nonimmigrant visitor (B-2). The Director subsequently issued a request for evidence asking the Applicant to provide additional documents of his continuous residence and physical presence in the United States, including but not limited to employment, medical, and school records; rent and utility bills, attestations by churches, unions, or other organizations; money order receipts, or any other relevant evidence of his continuous residence and physical presence in the United States. In response, the Applicant submitted a copy of his passport as evidence that he has not traveled outside the United States after his December 2020 entry. In denying the TPS request, the Director concluded that the evidence of the 2020 entry alone was not sufficient to establish that the Applicant continuously resided in the United States since July 29, 2021, and was physically present in the country since August 3, 2021.

To overcome this determination, the Applicant now submits a mobile phone charges statement, as well as his medical and school records. The statement lists the Applicant’s name and indicates that he made monthly payments on his calling plan from January 2021 through February 2022. The medical record in turn reflects that the Applicant was treated at a health care facility in Florida on May 18, 2021, and that he was residing at a Florida address at the time. Lastly, the Applicant’s school records show that he was enrolled in a Florida school English language program from August 17, 2021, through February 3, 2022, as a Florida resident. These documents, when considered with the previously provided evidence, are sufficient to demonstrate that following his December 2020 entry the Applicant has been continuously residing and has been physically present in the United States for the entire periods specified under the designation of Haiti for TPS.

Consequently, as the denial ground has been overcome, we will return the matter to the Director to determine whether the Applicant meets the remaining eligibility criteria for such status. The Director may request any additional evidence deemed necessary to make this determination.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.