



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

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

In Re: 22376566

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 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 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, 2021.¹

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

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

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

II. ANALYSIS

The only issue on appeal is whether the Applicant has demonstrated that she meets the requisite continuous residence and physical presence conditions under the designation of Haiti for TPS.

The record shows that the Applicant was last admitted to the United States in May 2019 as a nonimmigrant visitor for pleasure (B-2). On August 9, 2021, six days after Haiti was designated for TPS, she filed the instant form I-821 with proof of entry and her Haitian nationality.

The Director subsequently requested the Applicant to submit evidence that she has been residing in the US continuously since July 29, 2021, and that he has been continuously physically present in the country since August 3, 2021.

In response, the Applicant submitted several affidavits attesting that she has been living in the United States and has not left the country following her May 2019 entry. In denying the Applicant’s TPS request the Director determined generally that the affidavits and the initial passport evidence failed to show the Applicant’s continuous residence and physical presence in the United States during the requisite periods. The Applicant has overcome this determination on appeal by submitting additional evidence.

The supplemental evidence she now submits includes another affidavit, as well as primary documentation of her residence and physical presence in the United States. In the affidavit a local church pastor confirms that the Applicant, although not a registered member of the parish, has been attending weekly Sunday services since approximately February 2021. The Applicant also provides an Uber ride report indicating that she regularly used the company’s transportation services in the United States from July through December 2021. The Applicant’s COVID-19 vaccination card, in turn reflects that she received three vaccine doses in the United States between April and December 2021. Lastly, the Applicant submits a receipt for purchase of a cellular phone calling plan for the period from July 2021 to February 2022, and U.S. money transfer receipts from June, September, November, and December 2021.

These documents, when considered with the previously provided evidence, are sufficient to demonstrate that following her 2019 entry the Applicant has been continuously residing and has been physically present in the United States for the periods specified under the designation of Haiti for TPS.

We will therefore return the matter to the Director to determine whether the Applicant meets the remaining eligibility criteria for TPS under the 2021 Haitian designation.

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