



U.S. Citizenship  
and Immigration  
Services

*M*

[REDACTED]

FILE:

[REDACTED]

Office: Philadelphia

Date:

400 1 8 2004

IN RE:

Applicant:

[REDACTED]

APPLICATION:

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

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*for*  
*Robert P. Wiemann*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Liberia who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director determined that the applicant was ineligible for TPS because she had firmly resettled in another country. The director, therefore, denied the application.

On appeal, counsel claims that the applicant did not firmly resettle in another country and should be granted TPS.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state as designated by the Attorney General is eligible for temporary protected status 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 Attorney General 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.

On June 30, 2002, the applicant entered the United States with an H-4 nonimmigrant visa, as the spouse of an H-1B1 specialty occupation visa holder. At the United States port of entry, the applicant presented a Liberian

passport and a nonimmigrant visa issued in Gabon. A review of the record shows that prior to the applicant's arrival into the United States, she was residing in Gabon with her husband and children from June 6, 1999 to June 28, 2000, where her husband was employed. The record contains Gabonese immigration documents, including a Gabonese resident card and travel documents, authorizing the applicant to enter or reenter Gabon.

An alien shall not be eligible for temporary protected status if the Attorney General finds that the alien was firmly resettled in another country prior to arriving in the United States. Sections 244(c)(2)(B)(ii) and 208(b)(2)(A)(vi) of the Immigration and Nationality Act (the Act).

As defined in 8 C.F.R. § 208.15, an alien is considered to be firmly resettled if, prior to arrival in the United States, he or she entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement unless he or she establishes:

(a) That his or her entry into that country was a necessary consequence of his or her flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that country; or

(b) That the conditions of his or her residence in that country were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled. In making his or her determination, the asylum officer or immigration judge shall consider the conditions under which other residents of the country live; the type of housing, whether permanent or temporary, made available to the refugee; the types and extent of employment available to the refugee; and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation that includes a right of entry or reentry, education, public relief, or naturalization, ordinarily available to others resident in the country.

The director determined that the applicant had firmly resettled in another country prior to her arrival in the United States.

On appeal, counsel contends that the applicant did not firmly resettle in Gabon. According to counsel, the applicant remained in Gabon because of her husband, and her time spent there did not fit the definition found in 8 C.F.R. § 208.

However, the record demonstrates that the applicant's residence in Gabon clearly fits the criteria set forth in 8 C.F.R. § 208.15. Citizenship and Immigration Services (CIS) determined, in another proceeding, that the applicant did not face persecution in her native Liberia. Moreover, the applicant's husband apparently worked in Gabon for two years prior to their marriage. Therefore, her leaving Liberia and traveling to Gabon was not a result of a flight from persecution. Furthermore, the applicant's stay in Gabon was much longer than necessary to arrange onward travel. In fact, the applicant's husband worked in Gabon as a technician, and she did not leave that country until he was granted an H-1B1 visa to come to the United States, and she accompanied him. Similarly, the applicant and her family were seemingly under no restrictions while in Gabon, and they were able to obtain travel documents that allowed them reentry into Gabon after their trip to the United States. In point of fact, the applicant's husband returned to Gabon after the expiration of his H-1B1 visa. Therefore, counsel's claim that the applicant's presence in the country of Gabon does not meet the definition of "firmly resettled" as set forth in 8 C.F.R. § 208.15 is not persuasive.

It should be noted that the applicant also applied for Deferred Enforced Departure (DED) status as a Liberian native. The district director denied the application after determining that the applicant was ineligible for DED because she had firmly resettled in Gabon.

The burden of proof is upon the applicant to establish that she meets the above requirements. Counsel's statement and the evidence provided on appeal do not overcome the adverse evidence in the record. Consequently, the district director's decision to deny the application for temporary protected status will be affirmed.

The record of proceedings reflects that a Notice to Appear (Form I-862) was issued on September 13, 2000, because the applicant remained in the United States beyond August 1, 2000, without authorization.

An alien applying for temporary protected status has the burden of proving that she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

**ORDER:** The appeal is dismissed.