



U.S. Citizenship
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FILE: [REDACTED]
[EAC 07 263 71991]

Office: VERMONT SERVICE CENTER

Date: **MAR 05 2010**

IN RE: Applicant: [REDACTED]

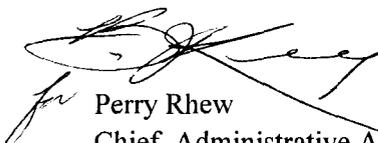
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 Vermont Service Center. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador 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 withdrew temporary protected status because the director determined that the applicant was ineligible for TPS because it appeared that he had firmly resettled in another country.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8.C.F.R. § 244.14(a)(1).

On appeal, counsel states that the director improperly withdrew the applicant's status and asserts the applicant was statutorily eligible for TPS at the time such status was granted and continues to be eligible.

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 record indicates that the applicant married a Mexican citizen on April 22, 1999 in California. In addition, according to the civil registered birth certificates from Mexico provided by the applicant, both of his daughters were born in Veracruz, Mexico and the applicant's nationality is listed on the birth certificates as Mexican. Furthermore, the applicant admitted during his asylum interview that he "lived briefly in Mexico," met his wife in Mexico, spent about three months there, that she became pregnant in 1988, and he returned to El Salvador. The applicant further stated that he returned to his wife in Mexico which resulted in another pregnancy and she gave birth to their second child. In addition, the applicant stated that his residence in 1988 was [REDACTED] Mexico, and his residence in 1989 was [REDACTED] Mexico.

On appeal, counsel contends that the director erred in concluding that the applicant was firmly resettled in Mexico before entering the United States. According to counsel, the applicant felt it necessary to list his nationality as Mexican on his daughters' birth certificates because he feared he would lose his parental right if he had a foreign citizenship and/or nationality.

The birth certificate for the applicant's daughter, [REDACTED] born on December 16, 1988 in Veracruz, Mexico indicates that the applicant, [REDACTED] residing at [REDACTED], was a Mexican citizen, and that his father, [REDACTED] and his mother [REDACTED] were Mexican citizens. The birth certificate for his daughter [REDACTED] born on November 3, 1989, in Veracruz, Mexico indicates that the applicant, [REDACTED] residing at [REDACTED] was a Mexican citizen, and that his father, [REDACTED] and his mother [REDACTED] were Mexican citizens. It is noted that the applicant subsequently submitted a letter from his mother, [REDACTED] signed and dated in the City of Santa Ana, El Salvador on March 24, 2006.

The applicant stated during his asylum interview that the birth certificates showing him as a Mexican citizen were the result of an error by the clerks when his daughters' births were registered, and that his daughters are El Salvadoran citizens because he is El Salvadoran. However, these discrepancies have not been satisfactorily explained. Furthermore, there is not any evidence that the applicant attempted to correct any purported errors in his daughters' birth certificates. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

In addition, counsel states that the applicant "spent some inconsequential time in Mexico." However, as indicated above, the applicant stated during his asylum interview that he went to Mexico; spent at least three months there after he met his wife; she became pregnant with their first child; he returned to El Salvador and returned once again to Mexico and his wife gave birth to their second child. However, the record indicates that the applicant was present in Mexico when his children were born as he signed the

birth certificates. All things considered, the amount of time the applicant spent in Mexico prior to and subsequent to the birth of his children clearly appears to be more than “some inconsequential time.”

The burden of proof is upon the applicant to establish that he meets the above requirements. Counsel’s statements do not overcome the adverse evidence in the record. The record reflects that the applicant is ineligible for TPS pursuant to Section 244(c)(2)(B)(ii) and Section 208(b)(2)(A) of the Act and As defined in 8 C.F.R. § 208.15. Consequently, the director’s decision to withdraw the applicant’s temporary protected status will be affirmed.

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.