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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

M₁

FILE:

[REDACTED]

Office:

[REDACTED]

Date:

NOV 30 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the [REDACTED] Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the [REDACTED] Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, [REDACTED] Service Center, and is now before the Administrative Appeals Office on appeal. The case will be remanded for further consideration and action.

The applicant claims to be a citizen of [REDACTED] 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 denied the application because it was determined that the applicant had firmly resettled in another country prior to arriving in the United States.

On appeal, counsel asserts that the applicant did not firmly resettle in the [REDACTED] as the Permits to Reside were issued for one-year periods and prohibited any gainful employment.

An alien shall not be eligible for TPS if the Attorney General, now the Secretary, Department of Homeland Security (Secretary), 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 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 burden of proof is upon the applicant to establish that he meets the above requirements. Applicants must submit all documentation required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

At the time the applicant filed her TPS application, she submitted:

- A copy of her [REDACTED] passport issued on December 7, 2005, which reflects the applicant was admitted to the [REDACTED] on December 10, 2005 and March 5, 2008. The admittance stamp of March 5, 2008, authorized the applicant to remain in the country for two weeks. The applicant departed [REDACTED] on April 5, 2008. The passport also reflects that the applicant was issued a nonimmigrant visitor visa on January 12, 2006, at the United States Consulate in [REDACTED]. The applicant was admitted to the United States on November 6, 2007.
- A copy of her October 27, 2006, divorce decree from [REDACTED] with English translation.
- A copy of her daughter's birth certificate who was born in [REDACTED]. The Certificate of Identity issued by the [REDACTED] government indicates the child to be a [REDACTED] national.
- A copy of a visitor visa issued on January 16, 2007, at the United States Consulate in [REDACTED] to applicant's second child. The child was admitted to the United States on May 7, 2007, and November 6, 2007.

U.S. Citizenship and Immigration Services records reflect that the applicant was also admitted to the United States on May 7, 2007, and April 6, 2008.

On April 29, 2010, a notice was issued requesting the applicant to provide her addresses for three years prior to her entry into the United States. The applicant was informed that if she had resided in another country other than [REDACTED] prior to entering the United States, she was to provide an explanation of her immigration status in that country; whether she had lawful permission to be in that country; whether her permission was temporary or permanent; her reasons for being in that country; the reason for leaving; whether she was a refugee from another country; whether she had the same privileges provided to other persons who lived permanently in the country; and reasons why she did not consider herself to have been firmly resettled in a country other than [REDACTED] before entering the United States.

The applicant was also requested to submit copies of all her passports showing entries and departures; records establishing citizenship of any other country than [REDACTED] and visas, residence cards or other immigration documents from any other country than the United States where she had resided. The applicant, in response, submitted copies of the following:

- A receipt dated July 11, 2006 from [REDACTED] government for a work permit for the applicant and her spouse.
- Three 'Permit to Reside' issued by the [REDACTED] immigration on February 20, 2004, December 16, 2004, and October 20, 2005. The permits expired on May 12, 2004, May 12, 2005 and May 12, 2006, respectively. Each permit authorized the applicant to enter and remain in the [REDACTED] for the purposes of residing with her husband,

██████████ The permits did not allow the applicant to engage in any gainful occupation.

The director determined that the ██████████ government authorized the applicant to enter, to remain and to return to the ██████████ prior to her arrival to the United States with a tourist visa in 2008. The director further determined that the applicant and her child who were born in the ██████████ were able to travel in and out of the ██████████ without any problems. Based on the foregoing, the director concluded that the applicant had been firmly resettled in the ██████████ and, therefore, she was ineligible for TPS under section 244 of the Act. The director denied the application on June 8, 2010.

A review of the documentation submitted throughout the application process does not support a finding that the applicant had received an offer of permanent resident status, citizenship, or some other type of permanent resettlement. 8 C.F.R. § 208.15. The fact that the Permit to Reside: a) was good for only a year at a time; b) authorized the applicant to enter and remain in the ██████████ for the sole purpose of residing with her spouse; and c) was subjected to the condition that the applicant would not engage in any other gainful occupation is evidence that the applicant had not been offered permanent resettlement.

Therefore, the applicant has overcome the director's sole reason for denial of the application and the decision of the director will be withdrawn

However, the evidence contained in the record is insufficient to establish the applicant's qualifying continuous residence in the United States since January 12, 2010, and continuous physical presence since January 21, 2010, as described in 8 C.F.R. § 244.2(b) and (c).

Therefore, the case will be remanded to the director for further adjudication of the application. The director may request any additional evidence that she considers pertinent to assist with the determination of the applicant's eligibility for TPS. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The case is remanded for further action consistent with the above and entry of a new decision.