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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

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date:

OCT 29 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 California 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 California Service Center by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010, must be filed with the \$630 fee. 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 for Temporary Protected Status was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 the applicant had firmly resettled in another country prior to his arrival in the United States.

On appeal, the applicant asserts that he is a [REDACTED] national and reiterates the procedures for nationals of [REDACTED] to register and apply for TPS. The applicant submits copies of his old and new [REDACTED] passports and a copy of his birth certificate with English translation.

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 AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

U.S. Citizenship and Immigration Services (USCIS) records reflect that on September 26, 2001, the applicant was admitted to the United States as a nonimmigrant visitor and as a citizen of the [REDACTED]. On November 7, 2007, and again on September 24, 2008, a Form I-360, Petition for [REDACTED], Widow(er), or Special Immigrant, was filed on the applicant's behalf. A copy of the applicant's passport from the Netherlands¹ was submitted with each petition. On his Form I-589, Application for Asylum and for Withholding of Removal, signed November 6, 2009, the applicant claimed to be a [REDACTED], that his last passport was issued in [REDACTED], and that he last departed his country on December 26, 2001.

On July 13, 2010, a notice was issued requesting the applicant to provide his addresses for three years prior to his entry into the United States. The applicant was informed that if he had resided in another country other than Haiti prior to entering the United States, he was to provide an explanation of his immigration status in that country; whether he had lawful permission to be in that country; whether his permission was temporary or permanent; his reasons for being in that country; the reason for leaving; whether he was a refugee from another country; whether he had the same privileges provided to other persons who lived permanently in the country; and the reasons why he did not consider himself 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 his passports showing entries and departures; records establishing citizenship of any other country than [REDACTED], and visas, residence cards or other immigration documents from any country other than the United States where he had resided.

Counsel, in response, asserted that the applicant resided in [REDACTED] from 1986 to 1999 and he obtained permanent status in three years. Counsel provided the applicant's address for the three years prior to his entry into the United States. Counsel asserted, in pertinent part:

During that time, [the applicant] did not enjoy the same privileges as dutch citizens; he could not vote, he could not travel and stay and stay out for extended periods of time, and his children when they were born were considered [REDACTED] due to the fact that he did not have the [REDACTED]. [The applicant] left [REDACTED] in 1999 and stayed here for 5 months then went back to [REDACTED]. He came back in the yr 2000 . . . and he has been here since. While he was here, he was called by the authorities in [REDACTED] and was told to go get his citizenship there. . . . [The applicant] went back, obtained his [REDACTED] citizenship and has enjoyed dual citizenship since [REDACTED]. [The applicant] did not firmly resettle in [REDACTED], but instead but was just there trying to earn a living. He states that he left [REDACTED] because after hurricane [REDACTED] hit that island in 1995, and another hurricane hit in 1997, it was hard for him to find a job and as a result, he relocated to the States.

¹ [REDACTED] is autonomous territory of the [REDACTED]

Counsel provided copies of the following documents:

- The applicant's work permit issued by the chief of police in [REDACTED] on October 12, 1992, with English translation.
- The applicant's citizenship documentation effective April 22, 1999, with English translation.
- The applicant's [REDACTED] passport issued by the Consulate General in [REDACTED] on November 13, 2009.
- The applicant's United States visa issued on November 21, 1997, and expired on November 21, 2002. The visa page reflects that the applicant was admitted to the United States on November 24, 1997, December 17, 1997, September 15, 1998, June 8, 1999, and December 14, 1999.
- The applicant's [REDACTED] passport issued on September 18, 2001, and expired on September 17, 2001.
- The applicant's Form I-94, Arrival-Departure Record, indicating that on April 13, 2000, and September 26, 2001, the applicant was admitted to the United States as a nonimmigrant visitor and as a citizen of [REDACTED]
- The applicant's birth certificate with English translation.
- Bank statements from Chase for the periods December 23, 2009 through January 26, 2010, and from February 24, 2010 through March 22, 2010.

The director determined that the applicant had remained in [REDACTED] for 13 years and during that period, he was allowed to work and gain citizenship. The director noted that the applicant had not established that his entry into [REDACTED] was the result of a flight from persecution and that he remained in the country only long enough to arrange onward travel or the conditions of his residence in [REDACTED] were substantially and consciously restricted by the authority of [REDACTED]. The director concluded that the applicant had firmly resettled in [REDACTED] and denied the TPS application on August 17, 2010.

On appeal, the applicant submits a new [REDACTED] passport issued on September 15, 2010.

In *Chee Kin Jang v. Reno*, 113 F. 3d 1074 (9th Cir. 1997), the United States Court of Appeals, found that the Service reasonably interpreted the term [REDACTED] (Immigration and Nationality Act) to Exclude [REDACTED] nationals who did not declare citizenship of [REDACTED] when they entered the United States, and that the Service's treatment of [REDACTED] depending on whether they entered under a [REDACTED] passport or a passport of a different country, was reasonable. The Court states that an alien is bound by the nationality claimed or established at the time of entry for the duration of his or her stay in the United States. Thus, a dual national [REDACTED] principal applicant must have claimed [REDACTED] nationality at the time of his or her last entry into the United States.

In *Chevron USA, Inc. v. Natural Resources Defense Counsel*, 467 U.S. 837, 842-843 & n.9 (1984), the district court held that the practice of binding an alien to his claimed nationality

“promotes the congressional policy of insuring that an alien will be able to return, voluntarily or otherwise, to his or her country of origin if requested to do so and provides for consistency in the enforcement of law, especially given the large numbers of nonimmigrant foreign nationals who visit the United States each year.”

In *Matter of Ognibene*, 18 I&N Dec. 425 (BIA 1983), the Board of Immigration Appeals held that under appropriate circumstances in a given proceeding of law, the operative nationality of a dual national may be determined by his conduct without affording him the opportunity to elect which of his nationalities he will exercise. The General Counsel, in GENCO Op. 84-22 (July 13, 1984), reinforced this concept and states, "In interpreting a law which turns on nationality, the individual's conduct with regard to a particular nation may be examined. An individual's conduct determines his 'operative nationality.' The 'operative nationality' is determined by allowing the individual to elect which nationality to exercise. The nationality claimed or established by the nonimmigrant alien when he enters the United States must be regarded as his sole nationality for the duration of his stay in the United States." [Emphasis added].

Although the issue of dual citizenship is not at question in this proceeding, the record is clear in establishing that the applicant elected to present himself as a citizen of [REDACTED] at the time he last entered the United States. [REDACTED] is not a designated foreign state under Section 244 of the Act. The applicant, therefore, does not meet the eligibility requirements of being a national of a state designated under section 244(b) of the Act.

The record indicates that the applicant had firmly resettled in [REDACTED] within the meaning of section 208(b)(2)(A)(vi) of the Act and 8 C.F.R. § 208.15, during his 13-year stay in that country from 1986 to 1999. The applicant has not demonstrated that the conditions of his stay in [REDACTED] met those described in 8 C.F.R. § 208.15(a) and (b), as required to establish that he was not permanently resettled in that country prior to his arrival in the United States. Consequently, the director's decision to deny the application for TPS will be affirmed.

An alien applying for TPS has the burden of proving that he 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.