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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Avenue, N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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M,

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE:

JAN 06 2011

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: Self-represented

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 with a filing fee of \$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 was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and action.

The applicant claims to be a native and citizen of Haiti who is applying for 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 after determining that the applicant was ineligible for TPS because he had firmly resettled in another country prior to his arrival in the United States.

On appeal, the applicant asserts that he was never firmly resettled in any other country prior to arriving in the United States.

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 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 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 his TPS application, he submitted:

- A copy of a renewal Permit to Engage in Gainful Occupation dated January 25, 2008, which was issued by the Commonwealth of The Bahamas. The work permit, which was valid from June 2, 2007 through June 2, 2009, authorized the applicant to enter and remain in the country while employed as a gardener for [REDACTED] at [REDACTED]. The permit was subjected to the condition that the applicant shall not engage in any other gainful occupation.
- A copy of his Haitian passport, visa, and Form I-94, Arrival-Departure Record, which reflected he was issued a nonimmigrant visitor visa on August 6, 2008, at the American Embassy in Nassau, Bahamas. The applicant entered the United States on December 24, 2008, and May 24, 2009, as a nonimmigrant visitor. The applicant was admitted to the Bahamas on January 1, 2009.

On April 30 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 reasons why he did not consider himself to have been firmly resettled in a country other than Haiti before entering the United States.

The applicant, in response, asserted that he resided in the Bahamas for 15 years from 1994 to 2009, and during this period he maintained one address. The applicant indicated that he was engaged in employment while in the Bahamas.

Based on the foregoing, the director concluded that the applicant had been firmly resettled in the Bahamas and, therefore, he was ineligible for TPS under section 244 of the Act. The director denied the application on June 8, 2010.

On appeal, the applicant asserts, "I want to make it clear that I was never benefitted any of the above privileges enumerate in the above paragraph [8 C.F.R. § 208.15]". The applicant asserts, in pertinent part:

I remained in Nassau, Bahamas because it was necessary for me to arrange onward travel and I was never firmly settled nor that I had any significant ties in Nassau. I was always in hiding. At a matter of fact, that was the principal reason that I obtained a visa to come to the United States. I was afraid for my life where I was. It

was imminent that any time I could get arrested and deported into Haiti. Had I was so resettled, I would not look for to move away from there.

Although the applicant was allowed to travel to and from the Bahamas, the fact that the work permit authorized the applicant to enter and remain in the Bahamas for the sole purpose of employment for [REDACTED] indicates that the applicant had not been offered permanent resettlement. The record contains no other evidence to establish that an offer of permanent resident status, citizenship or some other type of permanent resettlement was made. 8 C.F.R. § 208.15.

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.