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

U.S. Citizenship and Immigration Services

M1

[redacted]

DATE: JUL 28 2011 Office: VERMONT SERVICE CENTER FILE: [redacted]

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 Vermont 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 Vermont 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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a citizen of Sudan 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: 1) it was determined that the applicant had firmly resettled in another country prior to arriving in the United States; 2) the applicant failed to establish she was eligible for late registration; and 3) the applicant failed to establish that she is a national of Sudan.

On appeal, counsel puts forth a brief disputing the director's findings.

Pursuant to section 244(c) of the Act, an alien who is a national of a foreign state designated under subsection (b) of this section (or in the case of an alien having no nationality, is a person who last habitually resided in such designated state) and who meets the requirements of subsection (c) of this section, may be granted TPS in the United States. Further, 8 C.F.R. § 244.2(a) provides that an alien who 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, may, in the discretion of the director, be granted TPS. Section 101(a)(21) of the Act defines the term "national" to mean a person owing permanent allegiance to a state.

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.

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 is eligible for TPS only if such alien establishes that he or she:

(a) Is a national of a 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 Secretary 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.

(g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

The recent re-designation period for Sudan was effective November 2, 2004. The registration period began on October 7, 2004 and ended on April 5, 2005. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until November 2, 2011, upon the applicant's re-registration during the requisite period.

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 United States Citizenship and Immigrations Services (USCIS.) 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).

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

The first issue to be addressed is whether the applicant has established her nationality.

The record is clear in establishing that the applicant presented herself as a citizen of Sudan to the United States government at the time of her entry into the United States, and provided a copy of her Sudanese passport that was issued in Cairo, Egypt on July 15, 2000. Along with her TPS application, the applicant presented a copy of her Sudanese passport that was issued in 2008. Accordingly, the applicant has established her nationality as required in 8 C.F.R. § 244.9(a)(1). Therefore, the director's decision to deny the application on this issue will be withdrawn.

The second issue to be addressed is whether the applicant had firmly resettled in another country prior to entering the United States.

The director, in denying the application, determined that the applicant had firmly resettled in Egypt from 1992 to 1998. The director concluded that the applicant had failed to establish that she had resettled in Sudan before entering the United States.

According to the Form I-867A, Record of Sworn Statement, taken at the time of her entry into the United States on March 8, 2001, the applicant stated that she was born in Egypt, and she currently resided in Sudan. The applicant admitted that she resided in Sudan from 1984 to 1996, she returned to finish her studies in Egypt from 1996 to 1998, she returned to Sudan for one year and she has resided in Egypt since 1999. When asked why she provided an address in Sudan if she had resided in Egypt for the last two years, the applicant replied, "I was living in Sudan permanently I was living in Egypt temporarily, all my family is in Sudan."

On her Form I-589, the applicant claimed residence in Cairo, Egypt from February 2, 1992 to February 12, 1998, and from February 1999 to February 2001. The applicant indicated that she attended Cairo University from February 1992 to October 1995 and she was employed as a cashier from January 2000 to June 2000, and as an intern from July 2000 to the present. The applicant indicated that she was not a permanent resident of Egypt as she had to renew a yearly temporary

visa. The applicant claimed residence in Sudan from 1984 to 1992 and from February 12, 1998 to February 11, 1999. Before entering the United States, the applicant indicated she went to Madrid, Spain on February 11, 2001, to Havana, Cuba on February 12, 2001, and to Managua, Nicaragua on February 16, 2001.

During her removal proceedings on September 5, 2003,[1] the applicant testified that she had a temporary visa that allowed her to remain in Cairo, Egypt during the period she attended Cairo University. The applicant testified that in 1999, she applied several times to reside permanently in Egypt, but was denied. Although the Form I-589 listed employment in 2000, the applicant testified that she did not work as a cashier from January 2000 to June 2000. The applicant also testified that in 1996 she was residing in Egypt not Sudan as indicated on the record of sworn statement.

Based on the applicant's statement on her Form I-589 and her testimony during her removal proceedings on September 5, 2003, regarding the temporary nature of her visa and the denial of permanent residency, the duration of time the applicant spent in Egypt cannot by itself establish firm resettlement. There is no evidence to support a finding that while in Egypt the applicant was offered permanent resident status, citizenship, or some other type of permanent resettlement. 8 C.F.R. § 208.15. Therefore, the director's decision to deny the application on this issue will be withdrawn.

The third issue to be addressed is whether the applicant is eligible for late registration.

The record reflects that a Form I-862, Notice to Appear, was issued on March 16, 2001, and served on the applicant on March 19, 2001. The applicant's Form I-589, Application for Asylum and Withholding of Deportation, was filed on February 25, 2002. On April 22, 2004, a removal hearing was held and the applicant's Form I-589 was denied and she was ordered removed from the United States. The applicant appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). On May 25, 2005, the BIA dismissed the applicant's appeal. On April 6, 2010, a Form I-220B, Order of Supervision, was issued that appears to be still in effect.

The record reveals that the applicant filed her TPS application on March 1, 2010. To qualify for late registration, the applicant must provide evidence that during the re-designation registration period she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above. If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

On July 27, 2010, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). Counsel, in response, asserted:

> I am including a March 28, 2005 request to the assistant Chief Counsel office asking that they remand the case back down from the BIA in order to hear evidence aas [sic] well as asking for an oppurtunituy [sic] to get Voluntary Departutre [sic].

[1] The proceedings were subsequently continued to April 22, 2004.

> Based on this letter that the Applicant found in her legal documents is a **request for relief from removal or change of status pending or subject to further review or appeal that occurred during one of the designation registration period (from October 7, 2004 to April 5, 2005).**

Contrary to counsel's assertion a letter addressed to the immigration court requesting that a case be remanded is not a form of relief from removal.

Counsel also asserted, "CSPA the above alien qualifies as a derivative and is able to file at the present time."

Congress enacted the Child Status Protection Act (CSPA) in 2002, Pub. L. No. 107-208, 116 Stat. 927 (Aug. 6, 2002) to provide for continued classification of certain aliens as children in cases where the aliens "age out" – turn 21 years of age – while awaiting immigration processing.

It is not clear if counsel is attempting to apply CSPA to section 244 of the Act. If so, counsel's assertion has no merit as CSPA protected "child" status for family-based immigrants, employment-based immigrants, refugees, asylees, and Violence Against Women Act (VAWA). Furthermore, at the time the Form I-589 was filed by the applicant, she was over 21 years of age.[2]

The asylum application was a qualifying condition for late TPS registration under 8 C.F.R. § 244.2(f)(2)(ii). However, the applicant had 60-days immediately following the BIA's dismissal of her appeal on May 25, 2005 to file a TPS application as required under 8 C.F.R. § 244.2(g). As previously noted, the applicant did not file her TPS application until March 1, 2010, over four years later.

On appeal, counsel neither addresses the finding of the applicant's ineligibility as a late registrant nor provides any evidence to establish her eligibility as a late registrant. Consequently, the director's decision to deny the application for TPS for failing to establish her eligibility for late registration will be affirmed.

An alien applying for TPS 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.

[2] The applicant was born on June 22, 1970.