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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

PUBLIC COPY

[Redacted]

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DATE: **JUL 28 2011** Office: CALIFORNIA 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

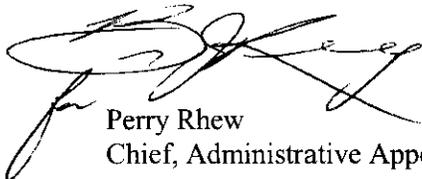
ON BEHALF OF APPLICANT:
[Redacted]

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 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 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, California 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 Haiti who is seeking Temporary Protected Status under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to establish that he is a citizen of Haiti.

On appeal, the applicant cites the 1987 Constitution of Haiti, Title II, Article II, and asserts that he is a national of Haiti because he was “born of a Haitian father or Haitian mother who are themselves native-born Haitians and have never renounced their nationality, possesses Haitian nationality at the time of birth.” The applicant submits a letter from the Haitian Consulate in Orlando, Florida, indicating that the applicant is a Haitian citizen. The letter also cites Title II, Article II of the 1987 Constitution of Haiti.

An alien shall not be eligible for temporary protected status 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.

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 temporary protected status (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.

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

Along with his TPS application the applicant submitted: 1) the biographical page of his Haitian passport issued on March 19, 2010; a copy of his father's Haitian birth certificate with English translation; 3) an identification card from [REDACTED] issued on April 13, 2006; and 4) money grams from Caribbean Airmail Inc., dated December 23, 2009 and March 23, 2010.

The record reflects that the applicant was born in Cayenne, French Guiana (Guyane) on April 27, 1984. On February 12, 2004, the applicant was admitted into the United States as a visitor for pleasure (WT) under the visa waiver program. The applicant claimed France as his country of citizenship and the Netherlands Antilles as his country of residence.

On June 28, 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 the country other than Haiti 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 Haiti, and visas, residence cards or other immigration documents from any other country than the United States where he had resided.

The applicant, in response, indicated that he was born in Cayenne, Guyane to Haitian parents. The applicant indicated that he moved to St. Martin with his parents where he resided for three years prior to entering the United States in 2004. The applicant provided his address while residing in St. Martin. The applicant submitted a Certificate of Identity dated August 6, 2010 from the Haitian Consulate in Orlando, Florida, and an additional copy of the biographical page of his Haitian passport.

The director noted that the applicant's Haitian passport and Certificate of Identity were issued subsequent to the expiration of the applicant's authorization (May 11, 2004) to remain in the United States. The director further noted that the applicant was in possession of a French passport at the time he was admitted into the United States on February 12, 2004. The director determined that the documents submitted were not sufficient to establish a Haitian nationality prior to entering the United States, and they did not establish nationality with a designated foreign state. Accordingly, on September 29, 2010, the director denied the application.

The United States Court of Appeals, in *Chee Kin Jang v. Reno*, 113 F. 3d 1074 (9th Cir. 1997), found that the Service reasonably interpreted the term "PRC national" in CSPA (Chinese Student Protection Act) to Exclude Chinese dual nationals who did not declare citizenship of PRC (People's Republic of China) when they entered the United States, and that the Service's treatment of PRC dual nationals, depending on whether they entered under a PRC 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 CSPA principal applicant must have claimed PRC nationality at the time of his or her last entry into the United States.

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].

The record is clear in establishing that the applicant elected to present himself as a citizen of France to the United States government at the time of his entry into the United States. Neither France nor French Guiana is 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. Accordingly, as the applicant has not demonstrated that his "operative nationality" is that of a TPS-designated country, the director's decision to deny the applicant's TPS status will be affirmed.

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