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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



M,

DATE: **JUN 08 2011** Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254

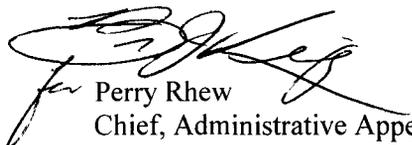
ON BEHALF OF APPLICANT: Self-represented

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 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,


for 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 on appeal. The case will be remanded for further action.

At the time the applicant filed her application she was represented by counsel. However, there is no indication that counsel is representing the applicant on appeal as a new Form G-28, Notice of entry of Appearance as Attorney or Accredited Representative, was not submitted with the Form I-290B, Notice of Appeal or Motion.¹ As such, the decision will be furnished only to the applicant.

The applicant, who was born in the Bahamas, 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 the Bahamas prior to arriving in the United States.

On appeal, the applicant asserts, “[a]lthough I was born in the Bahamas. I am a Haitian National. I have a Haitian Passport. I was not firmly resettled in the Bahamas. I lived in the Bahamas for some time and lost my right to be there.” The applicant submits a copy of her Haitian passport that was issued on June 22, 2010, in Nassau, Bahamas.

The record contains a Certificate of Identity dated August 13, 2009, that was issued by the Bahamian Minister of Foreign Affairs.² The certificate indicates that it is valid for traveling to all countries and reentry into the Bahamas and it was issued for the sole purpose of providing the applicant with identity papers in lieu of a national passport. The certificate also indicates that the applicant was born on October 29, 1985, in Nassau, Bahamas, and her nationality is Haitian.

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

¹ See 8 C.F.R. 292.4.

² Certificates of Identity are issued to individuals who were born in the Bahamas after July 10, 1973 to non-Bahamian parents. See [REDACTED]

(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 fact that the applicant was *born* in the Bahamas does not meet the definition of “firm resettlement.” There is no evidence to support a finding that prior to arrival in the United States the applicant had entered into another country with or while in that country was offered permanent resident status, citizenship, or some other type of permanent resettlement. 8 C.F.R. § 208.15. Therefore, the decision of the director will be withdrawn.

The country of the Bahamas is not a designated foreign state under section 244(b) of the Act. Therefore, the issue of the applicant’s nationality at the time she entered the United States must be addressed. It is noted that Bahamian-born individuals of foreign heritage do not automatically acquire citizenship.³ U.S. Citizenship and Immigration Services records reflect that since January 12, 2010, the applicant has departed the United States on several occasions and, therefore, the applicant’s continuous residence and continuous physical presence in the United States must also be addressed.

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.

³ See The Constitution of the Commonwealth of the Bahamas.