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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**

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FILE:



Office: NEBRASKA SERVICE CENTER

Date:

MAR 01 2011

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:



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 Nebraska 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 Nebraska Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. 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, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a citizen of Haiti 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 it was determined that the applicant had firmly resettled in another country prior to arriving in the United States.

On appeal, counsel asserts that the issue of firm resettlement is not applicable to the applicant as the TPS application has no questions regarding it. Counsel, in citing *Abdille v. Ashcroft*, 242 F. 3d 477 (3<sup>rd</sup> Cir. 2001), asserts that the burden is on the government to prove that an individual has been firmly resettled. Counsel provides an affidavit from the applicant requesting that his TPS application be reconsidered and approved.

Section 244(c)(1)(A) of the Act, and the related regulation in 8 C.F.R. § 244.2(a), provide that an applicant who is a national of a foreign state as designated by the Attorney General, now the Secretary, Department of Homeland Security (Secretary), is eligible for TPS only if such alien establishes that he or she is a national of a state designated under section 244(b) 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 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 the biographical page of his Venezuelan passport issued on April 4, 2002, at the Venezuelan Consulate in Embavenez, Mexico. Page one of the passport indicated that the applicant had a previous Venezuelan passport issued on May 13, 1997.
- A copy of the biographical page of his U.S. visitor visa issued on April 5, 2002, in Guadalajara, Mexico. The visa lists the applicant's nationality as Venezuelan.
- A copy of his Haitian birth certificate with English translation.
- A copy of his Form I-94, Arrival-Departure Record, which reflects that on April 8, 2002, the applicant was admitted into the United States as a nonimmigrant visitor and as a citizen of Venezuela.

On May 25, 2010, and June 16, 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 Haiti before entering the United States.

The applicant was also requested to submit: 1) copies of all his passports showing entries and departures; 2) records establishing citizenship of any other country than Haiti; 3) visas, residence cards or other immigration documents from any country other than the United States where he had resided; and 4) evidence demonstrating that he was not firmly resettled in the other countries where he resided prior to entering the United States.

The applicant, in response, indicated that he was born in Port-au-Prince, Haiti, but he migrated to Venezuela in 1969 because his parents were residing there. In 1997 he departed Venezuela to Mexico, where he resided for five years prior to entering the United States on April 8, 2002. The applicant indicated that he had to request permission annually to extend his temporary lawful permit to reside in Mexico. The applicant provided his address and places of employment while residing in Mexico. The applicant submitted:

- A copy of his Venezuelan passport.
- A copy of his Migratory Document Non Immigrant FM3 from Mexico. The document listed the applicant's nationality as Venezuelan.

- An additional copy of his U.S. visitor visa and his birth certificate.
- A copy of his father's birth certificate

The director, in denying the TPS application on July 19, 2010, determined that the applicant had firmly resettled in Venezuela and Mexico.

Counsel asserts, in pertinent part, "The TPS form I-821 does not ask if an individual was 'firmly resettled' in another country before entered the U.S. This issue appears to be beyond the preveue of the process. The reference to firm resettlement is in Section 208 of the INA, the asylum section of the Act."

Contrary to counsel's assertion, an alien shall not be eligible for TPS if the Attorney General, now the Secretary, Department of Homeland Security (Secretary), finds that the alien is described in section 208(b)(2)(A). Section 244(c)(2)(B)(ii) of the Act

In *Chee Kin Jang v. Reno*, 113 F. 3d 1074 (9<sup>th</sup> Cir. 1997), the United States Court of Appeals, 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 *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 Venezuela at the time he entered the United States. Venezuela 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 Venezuela within the meaning of section 208(b)(2)(A)(vi) of the Act and 8 C.F.R. § 208.15, during his stay in that country. The applicant has not demonstrated that the conditions of his stay in Venezuela 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.