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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

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DATE: Office: CALIFORNIA SERVICE CENTER  
**MAY 11 2011**

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:



**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 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, “[a]lthough the Applicant resided in Venezuela for approximately ten years and attained Venezuelan citizenship she is not barred from eligibility for TPS as a Haitian national since she has a well-founded fear of returning to Venezuela.” Counsel, in citing *Siong v. INS*, 276 F.3D 1030, 1040 (9<sup>th</sup> Cir. 2004), asserts that “the principles of firm resettlement does not apply to a person who has settled in third country but has a well founded fear of returning to that country.”

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.

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 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).

At the time the applicant filed her TPS application, she submitted a copy of her Haitian birth certificate with English translation, and a copy of her Form I-94, Arrival-Departure Record, which reflected she was admitted into the United States on July 2, 2001, as a nonimmigrant visitor.

USCIS records reflect that at the time the applicant was admitted into the United States on July 2, 2001, the applicant entered with a Venezuelan passport.

On May 27, 2010, a notice was issued requesting the applicant to provide her addresses for three years prior to her entry into the United States. The applicant was informed that if she had resided in another country other than Haiti prior to entering the United States, she was to provide an explanation of her immigration status in that country; whether she had lawful permission to be in that country; whether she permission was temporary or permanent; her reasons for being in that country; the reason for leaving; whether she was a refugee from another country; whether she had the same privileges provided to other persons who lived permanently in the country; and reasons why she did not consider herself 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 her passports showing entries and departures; records establishing citizenship of any other country than Haiti, and visas, residence cards or other immigration documents from any country other than the United States where she had resided.

The applicant, in response, indicated that she was a Venezuelan citizen and had resided in Venezuela for ten years prior to entering the United States. The applicant asserted, in pertinent part:

I consider myself to have not firmly resettled in Venezuela where I lived before I came to the Unites [sic] States because we were persecuted by the Venezuelan government for or beliefs and we were constantly living aggressions for our lived in Venezuela.

The applicant provided:

- An admittance stamp dated April 6, 1976, from the Venezuelan immigration.
- An identification card from the Republic of Venezuela issued on March 10, 1995 and expired in May 2005.
- A copy of her international driver's permit issued by Republic of Venezuela on March 20, 2003.
- A copy of the biographical page of her Venezuelan passport issued February 9, 2001.

- A copy of the biographical page of her U.S. visa issued on March 21, 2001, in Caracas, Venezuela. The visa lists the applicant's nationality as Venezuelan.
- An additional copy of the applicant's Haitian birth certificate with English translation.
- A letter with English translation from [REDACTED] indicating that the applicant was an active militant of the organization, Democratic Action Party.

The director determined that the applicant had established a life in Venezuela prior to entering the United States and, therefore, the applicant has firmly resettled in that country as she received an offer of permanent resident status. As such, on August 5, 2010, the director denied the application.

On appeal, the applicant claims that she and her brother were members of a political organization (ADECO) in Venezuela, which publically denounced [REDACTED] when he became president. The applicant asserts that supporters of [REDACTED] began actively killing members of the ADECO party. The applicant asserts that her father was arrested and beaten, her home was destroyed, and her mother was killed. The applicant asserts that her brother was granted political asylum in the United States in 2005. The applicant asserts that she cannot return to Venezuela due to her past persecution and, therefore, she is seeking TPS "since I am a national of Haiti."

It is noted that according to Title II, Articles 13a and 15 of 1987 Haitian Constitution, Haitian nationality is lost by naturalization in a foreign country and dual Haitian and foreign citizenship is not recognized under any circumstances.

The applicant asserts, "I had intended to apply for asylum when I entered the U.S. and had a person in Miami, FL who I had given my case to but never filed my application." However, USCIS is not responsible for the alleged inaction of applicant's representative and the record does not support a claim of ineffective assistance of counsel.

Counsel's statements on appeal have been considered. The AAO, however, is not the appropriate forum to determine a well-founded fear claim as the AAO has no jurisdiction over asylum proceedings. Rather, those issues are within the jurisdiction of the immigration courts and the Office of International Affairs. It is noted that the issue of a fear of persecution was not put forth until after an adverse finding was determined in the applicant's TPS application.<sup>1</sup>

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

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<sup>1</sup> There was also no claim of a fear of persecution at the time the applicant filed her Form I-687, Application for Status as a Temporary Resident, in September 2009.

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].

The record is clear in establishing that the applicant elected to present herself as a citizen of Venezuela at the time she 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 her stay (1976 to 2001) in that country. The applicant has not demonstrated that the conditions of her stay in Venezuela met those described in 8 C.F.R. § 208.15(a) and (b), as required to establish that she was not permanently resettled in that country prior to her arrival in the United States. The AAO is bound by the clear language of the regulation and lacks the authority to change it. 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.