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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: **MAY 12 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 \$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, 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, the applicant asserts, in pertinent part:

As to the issue of my Canadian resettlement, may I assert with all due deference that Canada has no objection whatsoever to any one of its citizens seeking and obtaining rights to resettle in a foreign country.

\* \* \*

With all due respect and deference to the United States inherent right to accept or deny the granting of status to whomever it wants, I am compelled to underscore the fact that my resettling here, albeit undocumented, has in no way been a burden to the United States. I am only asking for the privilege to contribute to this country's greatness within the bounds of my God given abilities.

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 his TPS application, he submitted a Canadian passport that was issued to him on May 22, 2008, and an expired Haitian identification card.

On June 23, 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 advised 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 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 country other than the United States where he had resided.

The applicant was informed 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, in response, asserted that he has neither a Haitian passport nor birth certificate to present at this time. The applicant asserted that he went to two Haitian consulates "requesting a search be undertaken to unearth a copy of my Haitian birth certificate. This, I did, with the intention of using my birth certificate to have my Haitian passport made." The applicant asserted, "no such foreign government can or should use the letter and or the spirit of that constitution as a guide in determining how it (government) will treat a Haitian National who seeks *aid and protection* under that government's system of law." The applicant submitted a: 1) Certificate dated January 7, 1979 in the French language with the required English translation, indicating that the applicant was born in Les Cayes and was currently residing in Port-au-Prince; and 2) letter to the Haitian Consulate in Boston, Massachusetts regarding the issuance of his Haitian birth certificate.

The director noted that in order for the applicant to have obtained Canadian citizenship, he had to have met the residence requirements of the immigration laws of Canada. The director determined that the applicant was ineligible for TPS as he had been firmly resettled in Canada prior to arriving in the United States. Section 208(b)(2)(A)(vi) of the Act. Accordingly, on October 13, 2010, the director denied the application.

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].

The record is clear in establishing that the applicant elected to present himself as a citizen of Canada at the time he last entered the United States. Canada 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 Canada within the meaning of section 208(b)(2)(A)(vi) of the Act and 8 C.F.R. § 208.15. The applicant has not demonstrated that the conditions of his stay in Canada 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.