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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

M1

[redacted]

DATE: OCT 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. § 1254a

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and action.

The applicant is 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 withdrew TPS 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 that he resided in the United States from 1999 to August 2008, and that he departed the United States to Canada on August 20, 2008, due to fear of deportation. The applicant asserts that he was not firmly resettled in Canada as "it takes between two (2) to five (5) years before the Court will determine if one is qualified for Political Asylum or not." The applicant requests that his application be reconsidered.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

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 U.S. Citizenship and Immigration Services. 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).

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

The record reflects that the applicant's Form I-589, Application for Asylum and Withholding of Removal, was filed on December 6, 1999. On October 23, 2000, a removal hearing was held and the applicant's asylum application was denied and he was ordered removed from the United States. The applicant appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). On June 12, 2002, the BIA summarily dismissed the applicant's appeal. The applicant filed a motion to reconsider before the BIA, which was denied on October 31, 2004.

The applicant voluntarily departed the United States to Canada on August 20, 2008. On March 11, 2010, the applicant was detained at the Champlain, New York port of entry. The applicant indicated that he had a pending refugee claim in Canada and that the Canadian government had kept his passport. The applicant was refused entry pursuant to sections 212(a)(6)(A)(i) and 212(a)(7)(B)(I) and (II). On March 12, 2010, the applicant was apprehended by the U.S. Border Patrol at the Highgate Springs, Vermont, port of entry after entering the United States without inspection. On the same date, a Form I-871, Notice of Intent/Decision to Reinstate Prior Order, was issued. The Form I-871, however, was not enforced.

The record contains photocopies of the applicant's Canadian driver's licenses issued on November 26, 2008 and November 25, 2009, and two Forms IMM-1442B, Refugee Protection Claimant Document, which indicated that on: 1) August 20, 2008, the applicant was eligible for federal health by the Canadian government valid through August 20, 2013; and 2) January 22, 2009, the applicant was granted a work permit valid through August 20, 2010. The driver's licenses and the Form IMM-1442B dated January 22, 2009, listed the applicant's residence in Toronto, Ontario.

On February 8, 2011, the applicant was requested 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, in response, provided photocopies of his driver's licenses and the Forms IM-1442B dated August 20, 2008 and January 22, 2009. The applicant indicated that he was afraid of being deported to Haiti so, he departed to Canada.

On June 23, 2011, the director issued another notice requesting the applicant to submit evidence establishing his continuous residence since January 12, 2010, and continuous physical presence since January 21, 2010, in the United States. The applicant was also informed that the documents submitted in response to the notice dated February 8, 2011, were insufficient. The applicant was again requested 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, in response, submitted:

- A Detainee Transfer Notification dated May 4, 2010.
- Medical documents dated Septembers 20 and 21, 2010, from the Orange County (Florida) Health Department.
- A Form I-220B, Order of Supervision, dated June 3, 2010.

The director, in issuing her decision on August 4, 2011, noted that the requested evidence had not been submitted and, therefore, a decision would be made based on the evidence in the record. The director determined that the applicant had been firmly resettled in Canada and was ineligible for the TPS.

The record, however, is silent to whether a pending refugee status in Canada amounts to a temporary offer or some other type of permanent resettlement within the meaning of 8 C.F.R. § 208.15. *See Maharaj v. Gonzales*, 450 F.3d 973, 977-78 (9th Cir. 2006), *Matter of A-G-G-*, 25 I&N Dec. 486 (BIA 2011). Accordingly, the AAO cannot uphold the director's finding.

As noted above, the applicant was requested to submit evidence to establish continuous residence and continuous physical presence in the United States during the requisite periods. The record does not reflect that the applicant has met the continuous residence and continuous physical presence requirements. Further, the applicant was subject to a prior order or removal and he effected a self-removal on August 20, 2008. Congress provided no relief for failure to maintain continuous residence due to a departure under an order of removal. These issues, however, have not been addressed by the director.

Therefore, 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.

Finally, the record reflects that the applicant filed a re-registration application [redacted] that was approved on September 27, 2011. The re-registration application is contingent upon the approval of the initial application. Once the initial TPS application was withdrawn on August 4, 2011, the applicant was no longer eligible for the benefit sought and, therefore, the re-registration application was approved in error.

ORDER: The director's decision is withdrawn. The case is remanded for further action consistent with the above and entry of a new decision.