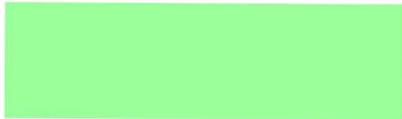
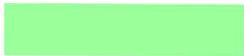




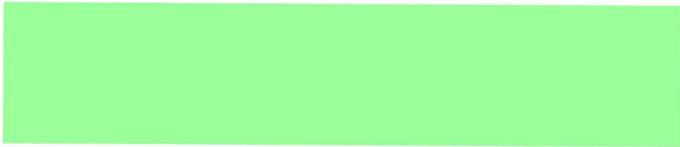
U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: Office: CALIFORNIA SERVICE CENTER File: 
JUN 03 2013

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron M. Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied 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 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 Bahamas prior to arriving in the United States.

On appeal, counsel asserts that the director erroneously denied the application because the applicant had not firmly resettled in the Bahamas. Counsel also asserts that the Permits issued to the applicant to reside and work in the Bahamas were temporary as the work permit was renewable on a yearly basis and the spousal resident permit was contingent on the applicant's continuous marriage to his Bahamian wife. Counsel contends that the applicant was never awarded permanent residency in the Bahamas.

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.

In 2011, the Board of Immigration Appeals (BIA) in *Matter of A-G-G-*, 25 I & N. Dec. 486 established the framework for adjudicating the firm resettlement bar which focuses exclusively on the

existence of an offer. The BIA also held that adjudicators must look first to the direct evidence in determining whether an offer has been made and may only consider indirect evidence if no direct evidence is available. As the regulations require, the type of status offered or received must be permanent, not temporary.¹ The examples given in the regulations include resident status,² permanent resident status,³ citizenship,⁴ or some other type of permanent resettlement.⁵ The BIA noted in *Matter of A-G-G-* that firm resettlement is “the ability to stay in a country *indefinitely*.”⁶

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 his Haitian passport issued on September 8, 2006 containing numerous entry and exit stamps for Bahamas and Haiti during the period 2006 through 2008. The passport also contains a United States B1/B2 nonimmigrant visa issued on October 30, 2006, at the United States Consulate in Nassau, Bahamas. The applicant was last admitted to the United States on March 22, 2009.
- A copy of Resident Spouse Permit issued on July 4, 2003 as the spouse of a Bahamian citizen, and valid through May 18, 2007. This permit is contingent on the applicant’s continuous marriage and residing together with his Bahamian spouse.
- A copy of Permit to Engage in Gainful Occupation valid for one year only and renewable on a yearly basis.

U.S. Citizenship and Immigration Services records reflect that the applicant had entered the United States several times during the period 2007 and 2008, and was last admitted to the United States on April 17, 2009.

On September 29, 2011, the director issued a Notice of Intent to Deny (NOID) TPS application based on firm resettlement. In that notice, the director requested the applicant to provide a list of 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

¹ 8 C.F.R. §§ 207.1(b); 208.15.

² 8 C.F.R. § 207.1(b).

³ 8 C.F.R. § 208.15.

⁴ 8 C.F.R. §§ 207.1(b); 208.15.

⁵ 8 C.F.R. §§ 207.1(b); 208.15.

⁶ *Matter of A-G-G-*, 25 I. & N. Dec. 486, 501 (BIA 2011)(emphasis added).

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 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 other country than the United States where he had resided. The applicant, in response, submitted copies of the following:

- A copy of Resident Spouse Permit issued by the Bahamian immigration on July 4, 2003, valid until May 8, 2007. The permit authorized the applicant to enter and remain in the Bahamas based on his marriage to his Bahamian citizen spouse. This permit is subject to the applicant's continuous marriage to his Bahamian spouse; and
- Two copies of Permit to Engage in Gainful Employment as a General Worker, renewable on a yearly basis. Permit No. [REDACTED] was issued on June 25, 2007 with an expiration date of May 18, 2008; and permit No. [REDACTED] was issued on August 15, 2008 with an expiration date of May 18, 2009.
- A statement about his entry into the Bahamas, residence and marriage to a Bahamian citizen, his employment in the Bahamas and his departure from the Bahamas in 2009.

The director determined that the Bahamian government authorized the applicant to enter, to work in the Bahamas and to remain in the Bahamas prior to his coming to the United States with a tourist visa in 2009. The director further determined that the applicant was married to a citizen of the Bahamas, and that he was able to travel in and out of the Bahamas without any problems. Based on the foregoing, the director concluded that the applicant had been firmly resettled in the Bahamas and, therefore, he was ineligible for TPS under section 244 of the Act. The director denied the application on February 7, 2012.

A review of the documentation submitted throughout the application process does not support a finding that the applicant had received an offer of permanent resident status, citizenship, or some other type of permanent resettlement. 8 C.F.R. § 208.15. The evidence of record shows that the Resident Spouse Permit was temporary and subject to the applicant's continued marriage to his Bahamian citizen spouse. According to Chapter 191 of the Bahamian Immigration Act, Part VI, the spousal permit issued to the applicant is contingent on (1) the applicant's marriage to a citizen of the Bahamas; (2) the applicant is not living apart from his spouse; and (3) is valid for a period commencing on the date of the grant of permit and ending not more than five years after the date of the marriage.

In this case, the record reflects that the applicant separated from his Bahamian spouse and has not had any communication with her since 2008, and does not know if she has divorced him in the Bahamas. The record also reflects that the spouse resident permit was not renewed by the applicant's spouse after it expired in 2007. Thus, this permit is temporary in nature and cannot be viewed as a permanent resident permit. The Permit to Engage in Gainful Occupation is also temporary as this permit is renewable on a yearly basis and has to be surrendered within seven days of the termination of the applicant's employment by his employer. These restrictive measures are evidence that the resident spouse permit and the permit to engage in gainful employment are temporary in nature and not permanent.

As such, the applicant has overcome the director's sole reason for denial of the application and the decision of the director will be withdrawn.

However, the director has not addressed the evidence of record to determine whether the applicant has established the requisite continuous residence in the United States since January 12, 2010, and continuous physical presence since January 21, 2010, as described in 8 C.F.R. § 244.2(b) and (c).

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.

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