



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: JUL 03 2014 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:
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) rejected a subsequent appeal on December 4, 2012 after determining that it had been untimely filed. The AAO is reopening this matter on motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii) for purposes of entering a new decision on the timely-filed appeal. The case will be remanded for further consideration and action.

The applicant is a citizen of Haiti who is applying for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254. The record reveals that the applicant filed a TPS application, on August 24, 2011.

The director denied the application on May 15, 2012, after determining that the applicant is an alien described in section 208(b)(2)(A)(vi) of the Act, as she had been firmly resettled in The Bahamas, a country which is not a designated foreign state under Section 244 of the Act.

On appeal, counsel reasserts the applicant's claim of eligibility for TPS and contends that the applicant is eligible for TPS because she never received an offer of permanent resettlement in The Bahamas. Counsel submits a brief.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, 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:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Secretary may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4.

The term *continuously physically present*, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The term *continuously resided*, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent

absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

On January 21, 2010, the Secretary designated Haiti as a country eligible for TPS. This designation allowed nationals of Haiti who have continuously resided in the United States since January 12, 2010, and who have been continuously physically present in the United States since January 21, 2010, to apply for TPS. On May 19, 2011, the Secretary re-designated Haiti for TPS eligibility which became effective on July 23, 2011. This re-designation allowed nationals of Haiti who have continuously resided in the United States since January 12, 2011, and who have been continuously physically present in the United States since July 23, 2011, to apply for TPS. The initial registration period for the re-designation began on May 19, 2011, and ended on November 15, 2011. On October 1, 2012, the Secretary announced an extension of the TPS designation for Haiti until July 22, 2014, upon the applicant's re-registration during the requisite time period. On March 3, 2014, the Secretary announced a second extension of the TPS designation for Haiti until January 22, 2016, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by U.S. Citizenship and Immigration Services (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 or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The issue in this proceeding is whether the applicant was firmly resettled in The Bahamas and, therefore is ineligible for TPS.

An alien shall not be eligible for TPS if the Attorney General 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 Immigration and Nationality Act (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 record includes four Certificates of Identity indicating that the applicant was born in The Bahamas in the year 1984. Both of her parents are citizens of Haiti. The Certificates of Identity contain four annual extensions with the most recent valid until March 31, 2007, and show admission stamps by The Bahamas immigration indicating that the applicant was allowed to return to The Bahamas after travel abroad. The record includes a copy of the applicant's Haitian passport with a B1/B2 Visa and a copy of the biographic page of the passport indicating that she was born in The Bahamas. The record includes police clearance in her name from The Bahamas Police Force. The applicant was married in The Bahamas in the year 2002 and she gave birth to two children there in the years 2002 and 2007. The record establishes that the applicant was allowed to work in The Bahamas until July 2010, when she departed the country.

Counsel contends factual errors led to the director's conclusion that the applicant had firmly resettled in The Bahamas. Counsel states that after her birth in January 1984 in The Bahamas, the applicant returned to Haiti on January 21, 1987, then returned to The Bahamas on August 24, 1999, and that she subsequently returned to Haiti for a visit on August 15, 2006. Counsel states that the applicant "admits that she has important ties to The Bahamas, including living there for a long time, marrying there (to another Haitian) and having 2 children there. But there was no offer of permanent resettlement as required by 8 C.F.R 208.15." Counsel further contends that the applicant never received an offer of permanent resident status, citizenship, or some other type of permanent resettlement from The Bahamas. Counsel states further:

While [the] [a]pplicant lived in [The] Bahamas for 13 years, she never received an offer of permanent resettlement from that country. Applicant admits the factors listed on page 3 of the [director's] decision show a significant relationship to The Bahamas. But they lack the clarity and force to substitute for direct evidence of an offer of permanent resettlement.

Counsel contends that the director erred in using a totality of the circumstances test and that a proper use of the test would result in a determination that the applicant was not firmly resettled in The Bahamas. Counsel asserts that an offer of permanent resettlement is required by the 9th Circuit Court ruling in *Maharaj v. Gonzales*, 450 F. 3d 961 (9 Cir. 2006), 6389-6422.

The fact that the applicant was born in The Bahamas does not meet the definition of "firm resettlement." There is no evidence to support a finding that "while in that country [the

applicant] was offered permanent resident status, citizenship, or some other type of permanent resettlement. 8 C.F.R. Section § 208.15. The applicant has overcome the director's sole reason for denial of the application and the decision of the director will be withdrawn.

The case will be remanded to the director for further adjudication of the TPS application. A review of the record reflects that the validity period of the applicant's fingerprint check has expired. Therefore, the case will be remanded for the purpose of sending the applicant a fingerprint notification form, and affording her the opportunity to comply with its requirements. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i), and the applicant shall be permitted to file an appeal without fee.

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