



U.S. Citizenship
and Immigration
Services

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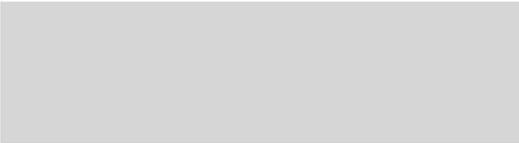
DATE: **AUG 3 1 2015**

FILE: [REDACTED]
APPLICATION RECEIPT #: [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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center denied the application. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Syria who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a. On April 8, 2014, 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 resubmits the arguments that were presented in response to the request for evidence. Counsel asserts that the applicant's former residence in Venezuela does not warrant a finding of firm resettlement, as the applicant had not been offered indefinite permanent residence in Venezuela. Rather, counsel contends that the applicant was offered temporary residence with the opportunity of renewal.

An alien shall not be eligible for TPS if 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.

Applicants must submit all documentation 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 this burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from the applicant's own statements. 8 C.F.R. § 244.9(b).

Along with his TPS application, the applicant presented a declaration indicating that he had married his former wife, a Venezuelan citizen, in Syria, departed Syria in December 17, 1978 and entered Venezuela as a visitor on December 18th. The applicant asserted that he resided in Venezuela from 1978 to 1999, became a permanent resident on December 8, 1987 and had to file for an extension of his residence every five years, with his last extension granting him permanent residence through December 8, 2003. The applicant further asserted that he was issued a U.S. visa and began visiting the United States in 1999, with his last entry into the United States on December 6, 1999. The applicant indicates that despite residing in Venezuela for many years, he did not apply for a certificate of naturalization.

The record contains the following:

- Copies of expired and current Syrian passports¹ and a U.S. visa issued in Caracas, Venezuela on February 17, 1999. The biographical page of the U.S. visa has entry stamps admitting the applicant into the United States on five occasions in 1999. The applicant's expired passports contained resident stamps that were issued by the Foreigner Status Directorate of Venezuela and expired on December 8, 1992, December 8, 1998 and December 8, 2003.
- A copy of his Form I-94, Arrival-Departure Record, which reflects the applicant's admittance into the United States on December 6, 1999, as a nonimmigrant visitor.

As there was no evidence that the applicant had returned to or resided in Syria prior to entry into the United States, the acting director determined that the evidence submitted indicated that the applicant had firmly resettled in Venezuela. On December 9, 2013, the acting director issued a notice requesting that the applicant provide all his addresses and the length of time at each address prior to his entry into the United States. The applicant was also requested to provide an explanation for his immigration status in any country and address whether he had lawful permission to be in that country, whether the permission was temporary or permanent, the 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 the country before entering the United States.

The applicant was asked to submit copies of all his passports, current and expired, showing entries and departures; records establishing citizenship of any other country than Syria; visas, residence cards or other immigration documents from any country other than the United States where he had resided; and evidence indicating he was not permitted to enjoy the same privileges provided to other persons who lived permanently in the same country where he resided.

¹ The initial passport was issued in [REDACTED] Syria, the second passport was issued on October 14, 1998 in [REDACTED] Venezuela, and the current passport was issued at the Syrian Embassy in [REDACTED] on April 4, 2012.

In *Matter of A-G-G-*, 25 I&N Dec. 486 (BIA 2011), the Board of Immigration Appeals set forth a four-step framework for determinations involving firm resettlement under section 208(b)(2)(vi) of the Act and 8 C.F.R. § 208.15. 1) The government bears the burden of presenting prima facie evidence of an offer of firm resettlement by producing direct evidence of governmental documents indicating an alien's ability to stay in a country indefinitely or indirect evidence, if of a sufficient level of clarity and force; 2) the alien can rebut the prima facie evidence by showing by a preponderance of the evidence that such an offer has not been made or that he would not qualify for it; 3) the totality of the evidence presented by both parties is considered to determine whether an alien has rebutted the evidence of an offer of firm resettlement; and 4) if the alien is found to have firmly resettled, the burden shifts to the alien to establish that an exception to firm resettlement applies by a preponderance of the evidence. *Id.*

The first step has been met, as the applicant's Venezuelan resident stamps constitute prima facie evidence of an offer of firm resettlement. *Id.* at 501. Further, the Venezuelan Constitution states that foreign nationals who marry a Venezuelan, upon declaring their wish to adopt the Venezuelan nationality after five years of marriage, are considered Venezuelan by naturalization. *See* 1999 Constitution of the Bolivarian Republic of Venezuela, Chapter II, Section one, Article 33. It is noted that a determination of firm resettlement is not contingent on whether the alien applies for that status and the existence of a legal mechanism by which an alien can obtain permanent residence may be sufficient to make a prima facie showing of an offer of firm resettlement. *Matter of A-G-G-* at 502.

In rebutting the prima facie evidence of an offer of firm resettlement, counsel asserts that all foreign residence in Venezuela is temporary, as there is no offer of indefinite or permanent resident status. Counsel relies on a report from the Immigration and Refugee Board of Venezuela: Information on obtaining permanent resident status and the rights associated with that status. Counsel also relies on *Bonilla v. Mukasey*, 539 F.3d 72 (1st. Cir. 2008) to support his assertion that the acting director failed to analyze the significance of the permanent resident stamp and the entitlements it conveys. *Bonilla* involved a Colombian citizen who had a five-year resident stamp in his Colombian passport, but never actually resided in Venezuela. The First Circuit Court of Appeals remanded *Bonilla* for a determination as to whether a residence stamp is a routine administrative requirement.

It is noted that the applicant is not residing within the jurisdiction of the First Circuit and the BIA, in *Matter of A-G-G-*, 25 I&N Dec. 25 I&N Dec 486 (BIA 2011), indicated that there exists a circuit split on firm resettlement decisions and that the jurisdiction within which the applicant resides has not issued a relevant published decision. The BIA also stated that a rebuttal of prima facie evidence may include evidence regarding how a law granting permanent residence to an alien is applied. *Id.* There is no indication in the report submitted by the applicant that renewing his residence status in Venezuela was anything more than a routine administrative requirement. Further, the report indicates that foreigners can apply for Venezuelan citizenship after ten years of legal residence. By virtue of marriage to a Venezuelan citizen, the applicant was eligible for Venezuelan citizenship after five years of marriage.

The applicant resided in Venezuela for 21 years immediately before entering the United States and allowed his 16-year permanent residence status in Venezuela to expire. It is noted that the fact that the applicant allowed his 16-year permanent residence status to expire has no bearing on whether he was firmly resettled in that country. See *Sultani v. Gonzales*, 455 F.3d 878, 880–83 (8th Cir. 2006) (“[T]he possibility that [an applicant for asylum] may not be permitted to return to [a third country] because [he] allowed [his] status in that country to expire is irrelevant to the finding that [he was] firmly resettled in [that country]”); *Firmansjah v. Gonzales*, 424 F.3d at 598,604 (7th Cir. 2005) (holding that expiration of permanent residency in a third country does not preclude a finding that the individual was firmly resettled in that country prior to entering the United States).

Counsel asserts that unlike *Salazar v. Ashcroft* 359 F. 3d 45, (1st Cir. 2004), in which the court found that a Peruvian with a Venezuelan passport was firmly resettled, the applicant never obtained a Venezuelan passport and continually maintained his Syrian passport. Like the applicant in *Salazar*, the record indicates that the applicant was able to travel in and out of Venezuela during his residence there. Further, as noted, the applicant, in addition to obtaining permanent residence in Venezuela, is also a spouse of a Venezuelan citizen.

In considering the totality of the evidence, we find that the evidence supports a finding that the applicant had been firmly resettled in Venezuela prior to his arrival in the United States. The applicant has not indicated that the regulatory exceptions to firm resettlement in 8 C.F.R. § 208.15(a) or (b) apply in this matter. Consequently, the director's decision to deny the application for TPS will be affirmed.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.