



U.S. Citizenship
and Immigration
Services

(b)(6)



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 Director, Nebraska Service Center, denied the application for re-registration and withdrew the applicant's Temporary Protected Status. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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. §1254a. On November 3, 2014, the director denied the application and withdrew TPS because it was determined that the applicant had firmly resettled in another country prior to arriving in the United States.

On appeal, counsel asserts that as TPS has been denied, the proceedings should be remanded to the immigration judge for review. Counsel also resubmits his brief submitted in response to the Notice of Intent to Deny.

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 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. 8 C.F.R. § 244.9(b). To meet this burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from the applicant's own statements. *Id.*

The evidence of record reflects that prior to arriving in the United States on August 14, 1994, the applicant was firmly resettled in Venezuela. The applicant departed Haiti in 1977, resided in [REDACTED] for approximately nine months, then traveled to Venezuela where he resided from June 1978 to August 1994. The applicant obtained lawful permanent residence status while in Venezuela.

Further, on April 28, 2005, the applicant filed a Form I-589, Application for Asylum and Withholding of Removal. On January 7, 2008, during removal proceedings, an immigration judge denied the applicant's application for asylum, in part, due to his firm resettlement in Venezuela. (I.J. at 14-16). In dismissing the applicant's appeal, the Board of Immigration Appeals (BIA), on September 16, 2009, upheld the immigration judge's finding that the applicant had firmly resettled in Venezuela prior to arriving in the United States. The BIA determined that the applicant had not rebutted the presumption of firm resettlement despite demonstrating that his status may have expired because he had not resided in Venezuela for a number of years. *See Firmansjah v. Gonzales*, 424 F. 3d 598, 604 (7th Cir. 2005) (holding that expiration of permanent residency in a third country after entry into the United States does not alter the determination that an applicant was firmly resettled prior to arrival in the United States).

On appeal, counsel resubmits his response to the notice of intent to deny issued on August 16, 2014, stating that a firm resettlement finding can be waived in a TPS eligibility determination. The director determined that the applicant was ineligible for TPS due to his firm resettlement in Venezuela, under section 208(b)(2)(A)(vi) of the Act. It is noted that section 244(c)(2)(A) of the Act, allowing for the waiver of certain ground of inadmissibility in TPS determination, applies only to certain provisions of section 212(a). As the applicant is ineligible for TPS under section 244(c)(2)(B), there is no indication that the applicant's ineligibility can be waived.

On appeal, counsel asserts that the denial of the TPS application is subject for further review before immigration judge.

An applicant for TPS may seek *de novo* review by an immigration judge in removal proceedings, regardless of whether all appeal rights before the Department of Homeland Security have been exhausted. *Matter of Lopez-Aldana*, 25 I&N Dec. 49 (BIA 2009). In *Matter of Barrientos*, 24 I&N Dec. 100 (BIA 2007), the BIA held that section 244(b)(5)(B) of the Act permits *de novo* review of TPS eligibility in removal proceedings even if the TPS application has previously been denied by the AAO.

However, in both *Lopez* and *Barrientos*, removal proceedings were initiated against the aliens and they sought a *de novo* determination of their eligibility for TPS in the proceedings before an immigration judge. In the present case, there is no evidence that the applicant has been placed into

removal proceedings. The record does not indicate that a charging document has been issued against the applicant. 8 C.F.R. § 244.18(b), 8 C.F.R. § 244.11.¹

The applicant has not established that the regulatory exceptions in 8 C.F.R. § 208.15(a) or (b) applies in order to meet the firm resettlement bar. In considering the totality of the evidence we find that the applicant had been firmly resettled in Venezuela prior to the arrival in the United States. Consequently, the director's decision to deny the application for reregistration and withdraw 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.

¹ 8 C.F.R. § 244.18(b) provides that the filing of a charging document with the immigration court renders inapplicable any other administrative, adjudication or review of eligibility for TPS. If a charging document is served on the alien with a notice of denial or withdrawal of [TPS], an alien may renew the application for [TPS] in deportation or exclusion proceedings. 8 C.F.R. § 244.11.