



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUN 05 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:

NO REPRESENTATIVE OF RECORD

INSTRUCTIONS:

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,

f.s.r. Ron Rosenberg

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a national of Haiti and a citizen of Canada who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254A. On September 16, 2014, the director denied the application because she determined that the applicant had not established that (1) she is a national of a foreign state designated by the Secretary, Department of Homeland Security (Secretary) for TPS, (2) she met the requisite continuous residence and continuous physical presence, and (3) she was not firmly resettled in Canada prior to arriving in the United States.

On appeal, the applicant asserts that she is eligible for TPS because she is a national of Haiti, a designated country, that she has continuously resided in the United States since 1996, and that the fact that she became a citizen of Canada was “purely transitional” and should not preclude her from obtaining TPS as a national of Haiti and as a qualifying spouse.

Applicable Law

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 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; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the FEDERAL REGISTER, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;

- (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or
 - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.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

¹ 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 March 3, 2014, the Secretary announced an extension of the TPS designation for Haiti until January 22, 2016, upon the applicant's re-registration during the requisite time period.

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 she meets the above requirements. 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 her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

Facts and Procedural History

The record reflects that the applicant filed her initial application for TPS on June 6, 2014. On June 30, 2014, the applicant was requested to submit evidence to establish that she is eligible for late registration as set forth in 8 C.F.R. § 244.2(f)(2), that she is a citizen or national of Haiti, that she had continuously resided and been continuously physically present during the requisite period, and that she had not been firmly resettled in Canada prior to entering the United States. The applicant responded with additional evidence and documentation.

The record contains copies of:

- The applicant's Haitian birth certificate accompanied by photo identification
- Copies of her Canadian passports;
- A copy of the applicant's marriage certificate to her current spouse, a Haitian national eligible for TPS in the United States.
- Copies of Form I-94, Arrival/Departure Card indicating that she is a citizen of Canada.
- Employment records, tax returns, W-2 Wage, and other documentation to establish her residence in the United States during the requisite period.
- A copy of Haiti's Constitution of 1987 with Amendments through 2012.

Based on the record, the director accepted the applicant's application as a late initial registration. The director determined that although the applicant is a national of Haiti, she failed to establish that she is a national of a state designated for TPS because of her Canadian citizenship. The director also determined that the applicant had not established the requisite continuous residence and continuous physical presence in the United States and found that she was firmly resettled in Canada prior to arriving in the United States. The director denied the application accordingly.

Analysis

A *de novo* review of the record shows that the applicant is a national of Haiti and a citizen of Canada and that she is eligible to apply for TPS as a national of Haiti. The applicant submitted sufficient credible evidence, in the form of nationality identity document, to establish that she is a national of Haiti. Contrary to the director's finding, Haiti recently amended its constitution to allow dual citizenship to nationals of Haitian residing outside of Haiti who acquired citizenship of another country. Having dual citizenship does not preclude an applicant from meeting the nationality requirement for TPS.

The applicant has also submitted sufficient credible evidence to demonstrate that she has continuously resided in the United States and was continuously physically present in the United States during the requisite period. The applicant submitted sufficient explanation to demonstrate that her absences from the United States were brief, casual and innocent, which did not preclude her meeting the residency and physical presence requirements.

We find, however, that the applicant was firmly resettled in Canada prior to arriving in the United States. The record shows that the applicant traveled to Canada from Haiti in 1982 at the age of 14. While in Canada, she was granted Canadian citizenship and obtained a nursing license in 1994. She remained in Canada until 1996, when she came to the United States on a temporary work visa to work as a nurse. Although the applicant has established her residence in the United States since 1996, she remains a citizen of Canada. The applicant is able to travel to and from Canada without any restrictions. The applicant has a current Canadian passport valid until March 11, 2018. There is no evidence in the record demonstrating that the applicant has relinquished her Canadian citizenship.

The applicant has not demonstrated, pursuant to 8 C.F.R. § 208.15, that she was not in fact firmly resettled in Canada because either her entry into Canada was a necessary consequence of her flight from persecution, that she remained there only as long as was necessary to arrange onward travel, and that she did not establish significant ties there, or that the conditions of her residence in Canada were so substantially and consciously restricted that she was not in fact resettled. Consequently, we affirm the decision of the director to deny the applicant's application for TPS on this ground.

Conclusion

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.