U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17837924

Date: SEPT. 23, 2022

Motion on Administrative Appeals Office Decision

Form I-821, Application for Temporary Protected Status

The Applicant, who is a dual citizen of Belize and El Salvador seeks review of a decision withdrawing her Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a.

The Applicant was granted TPS in 2002 as a national of El Salvador. The Director of the Vermont Service Center subsequently withdrew TPS concluding that the Applicant was not eligible for such status because her operative nationality was Belizean, as she was last admitted to the United States with that country's passport, and because she was firmly resettled in Belize prior to entering the United States. We dismissed the appeal concurring with the Director's determination that for the purposes of the U.S. immigration law the Applicant was a national of Belize and not a national of El Salvador, a TPS designated country.

The matter is now before us on a combined motion to reopen and reconsider. The Applicant asserts that the nonimmigrant status in which she was admitted to the United States as a citizen of Belize expired long before she applied for TPS, and her dual citizenship therefore does not disqualify her from obtaining TPS as a national of El Salvador.

Upon review, we will grant the motion and remand the matter to the Director for further proceedings consistent with our opinion below.

I. LAW

A motion to reopen is based on documentary evidence of new facts, and a motion to reconsider must show that our decision was based on an incorrect application of law or policy to the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(2)-(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

As previously discussed, U.S. Citizenship and Immigration Services (USCIS) may withdraw the status of an applicant granted TPS under section 244 of the Act at any time if it is determined that the applicant was not eligible for such status at the time it was granted, or becomes ineligible for such

status at any time thereafter. 8 C.F.R. § 244.14(a)(1). USCIS has the burden to show why TPS should be withdrawn. *See generally* 8 C.F.R. § 244.14.

To qualify for TPS under Salvadorean designation an applicant must first establish that they are a national of El Salvador. Section 244(c)(1) of the Act; 8 C.F.R. § 244.2(a). However, a national of a TPS-designated country who was firmly resettled in another country prior to arriving in the United States is not eligible for TPS. Section 244(c)(2)(B)(ii) of the Act; section 208(b)(2)(A)(vi) of the Act, 8 U.S.C. § 1158(b)(2)(A)(vi); 8 C.F.R. § 244.4(b).

II. ANALYSIS

In our previous decision, which we incorporate here by reference we concluded that the Applicant, who was born in Belize in 1986, resided there until she was 10 years old, and was admitted to the United States in 1996 as a nonimmigrant visitor for pleasure with her Belizean passport was a national of Belize for purposes of U.S. immigration law and therefore ineligible for TPS under Salvadorean designation. In reaching this conclusion, we relied in part on *Matter of Ognibene*, 18 I&N Dec. 425 (BIA 1983), a precedent decision of the Board of Immigration Appeals (the Board) which held that a dual national nonimmigrant is, for the duration of their temporary stay in the United States, of the nationality they claimed or established at the time of entry into the United States.

The Applicant points out that *Matter of Ognibene* is not dispositive in her case, because her temporary nonimmigrant stay in the United States as a citizen of Belize expired in 1997 and she never sought to extend it before applying for TPS as a Salvadorean national in 2002. She asserts that for TPS purposes she therefore should be considered a national of El Salvador and eligible for such status under that country's designation for TPS.

A. Nationality

Upon review, we conclude that the Applicant has demonstrated by a preponderance of the evidence that she was and remains a national of El Salvador for TPS purposes, and we withdraw our previous determination to the contrary.

As stated, the Act and corresponding regulations require TPS applicants to establish, in part that they are "nationals" of the county of TPS designation. There is no dispute that the Applicant used her Belizean passport when she was admitted to the United States as a nonimmigrant visitor in December 1996. Nevertheless, the record shows that the period of the Applicant's authorized temporary stay in the United States expired in June 1997, before she applied for TPS as a Salvadorean national. More importantly, under the plain language of the Act and regulations to qualify for TPS under Salvadorean designation the Applicant was required to show only that she was a national of El Salvador when she applied for TPS.

Accordingly, the proper inquiry in this case is whether at the time the Applicant sought and was granted TPS in 2002 El Salvador considered her that country's national notwithstanding her Belizean citizenship, and continues to recognize her as a Salvadorean national. The preponderance of the evidence in the record indicates that El Salvador has always considered the Applicant that country's national. The Applicant's birth certificate reflects that she was born in Belize to a Belizean citizen

mother and a Salvadorean citizen father. The Applicant indicates on motion that she has acquired Salvadorean citizenship through her father at birth, and the record includes a copy of her Salvadorean passport issued by the government of El Salvador in 2020. This evidence supports the Applicant's claim that although she was born in Belize and holds that country's citizenship, she was born to a Salvadorean citizen father and El Salvador continues to recognize her as a Salvadorean citizen. The Applicant has therefore demonstrated that she was a national of El Salvador when she applied for TPS under that country's designation in 2002, and that she remains a Salvadorean national at this time. Accordingly, this ground for the withdrawal of her TPS has been overcome.

B. Firm Resettlement

Although not specifically addressed in our appellate decision, the Director also determined that the Applicant was ineligible for TPS because she was firmly resettled in Belize before arriving in the United States. The Director based this determination on the fact that the Applicant was born and resided in Belize before entering the United States with that country's passport.

As an initial matter, the firm resettlement bar in section 244(c)(2)(B)(ii) of the Act is based on the asylum provisions in section 208(b)(2)(A)(iv) of the Act and corresponding regulations at 8 C.F.R. § 208.15.

The regulations at 8 C.F.R. § 208.15, as in effect when the Applicant was granted TPS in 2002, provided that a noncitizen "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 residence status, citizenship, or some other type of permanent resettlement," unless they can establish: (1) that their entry into that country was a necessary consequence of their flight from persecution, that they remained in that country only as long as was necessary to arrange onward travel, and that they did not establish significant ties in that country; or (2) that the conditions of their residence in that country were so substantially and consciously restricted by the authority in the country that they were not in fact resettled.

For the firm resettlement bar to apply in the asylum context, a noncitizen must first establish that they are a "refugee" as defined in section 101(a)(42)(A) of the Act, 8 U.S.C. § 1101(a)(42)(A); that is: "[a] person who is outside any country of such person's nationality . . . and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion . . . ." Section 208(b)(1)(A) of the Act.

USCIS applies the firm resettlement bar to asylees who, after becoming a refugee (i.e. after the fear of persecution arises), and prior to entering the United States entered into another country with, or while in that country received, an offer of permanent residence status, citizenship, or some other type of permanent resettlement, unless they can establish an exception to that bar. The application of the asylum firm resettlement bar is consistent with the application of the same bar in the context of the refugee program. Specifically, section 207(c)(1) of the Act, 8 U.S.C. § 1157, establishes authority to "admit any refugee who is not firmly resettled in any foreign country . . . ." Thus, in the refugee context, the language in 8 C.F.R. § 208.15 defining the firm resettlement bar makes it clear that the bar only applies to refugees—noncitizens who were firmly resettled after events have occurred that

made them refugees. Moreover, the corresponding regulation 8 C.F.R. § 207.1(b) not only provides that a noncitizen is firmly resettled if they traveled to and entered the third country *as a consequence of flight from persecution*, but it also references the conditions of residence *of the refugee*. While the refugee and asylum firm resettlement bars are found in different statutory provisions, they use exactly the same "firmly resettled" language, and are based on the same two cessation and exclusion clauses of the 1951 Refugee Convention.[1] "As a rule, a single statutory term should be interpreted consistently." *Matter of Alyazji*, 25 I&N Dec. 397, 404 (BIA 2011) (citing *Clark v. Martinez*, 543 U.S. 371, 382 (2005)).

Thus, for asylum purposes a noncitizen cannot be firmly resettled in another country until they have suffered past persecution in their country of nationality or until events have occurred in their country of nationality that gave rise to their well-founded fear of persecution. Because the same asylum firm resettlement provisions apply in the TPS context, we must interpret them consistently in these proceedings. Accordingly, to determine whether the Applicant is subject to the firm resettlement bar for TPS purposes we must consider the timing of her residence in Belize, the events that gave rise to the designation of El Salvador for TPS, and her entry into the United States.

The record reflects that the Applicant was born and resided in Belize until she was admitted to the United States as a nonimmigrant in 1996, and there is nothing in the record to suggest that she has departed from the United States at any time after the admission. El Salvador was designated for TPS in March 2001. *See Designation of El Salvador Under Temporary Protected Status Program*, 66 Fed. Reg. 14214 (March 9, 2001). The Federal Register notice designating El Salvador for TPS cited three earthquakes, occurring on January 17, February 13, and February 17, 2001, in support of the decision to extend TPS protections to certain El Salvadoran nationals. Because the Federal Register notice directly cites all three events as the conditions due to which El Salvador is "unable, temporarily, to handle adequately the return" of its nationals, we interpret these three occurrences to constitute "the events that gave rise to the TPS designation." The latter date of the events cited in the designation notice is February 17, 2001, when the third earthquake occurred. Thus, by February 17, 2001, all of the conditions specifically identified in the Federal Register had arisen, and it would be reasonable to conclude that the firm resettlement bar could apply only to El Salvadoran TPS applicants who met all of the requirements for firm resettlement (including entry into a third country and an offer of permanent residence status, citizenship, or some other type of permanent resettlement) on or after February 17, 2001.

Because the record in this case reflects that the Applicant's residence in Belize preceded the events that gave rise to the designation of El Salvador for TPS, the Applicant is not subject to the firm resettlement bar.

III. CONCLUSION

The Applicant has demonstrated that she is a national of El Salvador for the purposes of TPS under that country's designation, and we withdraw our previous determination to the contrary. Furthermore, because the Applicant entered the United States before the events that gave rise to the designation of El Salvador for TPS occurred, the firm resettlement bar does not apply. The grounds for the

[1] *See* Articles 1.C.(3) and 1.E., *Convention Relating to the Status of Refugees*, July 28, 1951, 189 U.N.T.S. 137.

withdrawal of the Applicant's TPS and subsequent dismissal of her appeal therefore have been overcome. Accordingly, we will return the matter to the Director for additional review and entry of a new decision.

ORDER: The decision of the Administrative Appeals Office is withdrawn. The matter is remanded to the Director of the Vermont Service Center for the entry of a new decision consistent with the foregoing analysis.