



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 24626083

Date: MARCH 21, 2023

Appeal of California Service Center Decision

Form I-821, Application for Temporary Protected Status

The Applicant, a national of Haiti seeks Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a.

The Director of the California Service Center denied the TPS request, concluding that the Applicant was ineligible for such status because he was firmly resettled in Mexico before arriving in the United States. The matter is now before us on appeal. 8 C.F.R. § 103.3.

On appeal, the Applicant explains that he only stayed in Mexico to earn some money while waiting for an opportunity to come to the United States, and that it was never his intention to remain there permanently.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Section 244(b) of the Act authorizes the Secretary of Homeland Security, after consultation with appropriate agencies of the U.S. Government, to designate a foreign state, in part if the Secretary determines that there exist extraordinary and temporary conditions in the foreign state that prevent nationals of that foreign state from returning to the state.

On August 3, 2021, the Secretary of Homeland Security designated Haiti for TPS. *See Designation of Haiti for Temporary Protected Status*, 86 Fed. Reg. 41863 (August 3, 2021).¹ The designation allows eligible Haitian nationals who have continuously resided in the United States since July 29,

¹ The designation of Haiti for TPS was subsequently extended, with the most recent extension and redesignation on January 26, 2023. *See Extension and Redesignation of Haiti for Temporary protected Status*, 88 Fed. Reg. 5022 (January 26, 2023).

2021, and who have been continuously physically present in the United States since August 3, 2021, to apply for TPS.

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).

A noncitizen is considered to be firmly resettled if, prior to arrival in the United States, they 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 they establish that: (1) their entry into that country was a necessary consequence of their flight from persecution, they remained in that country only as long as was necessary to arrange onward travel, and did not establish significant ties in that country; or (2) the conditions of 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. 8 C.F.R. § 208.15(a)-(b).

II. ANALYSIS

The only issue on appeal is whether the Applicant is subject to the firm resettlement bar for TPS. Upon review of the record as supplemented on appeal we conclude that he is not.

The Applicant filed the instant TPS request in late August 2021, representing that he last entered the United States without inspection and admission or parole in July 2021.² The Director subsequently issued a request for evidence, asking the Applicant to provide, in part a list of all foreign countries where he resided prior to entering the United States and information about his status in those countries. In response, the Applicant submitted a statement explaining that he left Haiti after armed gangsters came to his place of business and robbed him. He stated that he initially traveled to Chile and later entered Mexico, where he remained for approximately seven months before coming to the United States. The Applicant also submitted a copy of his Mexican permanent resident card, which reflects that in October 2020 the government of Mexico granted him permanent resident status in the country. As stated, the Director denied the Applicant's TPS request concluding that this evidence pointed to the Applicant's firm resettlement in Mexico.

As a preliminary matter, the firm resettlement bar for TPS in section 244(c)(2)(B)(ii) of the Act referenced above 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.

In the asylum context, U.S. Citizenship and Immigration Services (USCIS) applies the firm resettlement bar to asylees who, after becoming refugees (i.e., after the events that gave rise to the fear of persecution and their need for protection),³ and before their arrival in the United States entered into

² The record reflects that the Applicant was apprehended near El Paso, Texas by the U.S. Customs and Border Protection officers on July 12, 2021, and placed in removal proceedings which remain pending at this time.

³ See section 101(a)(42)(A) of the Act, 8 U.S.C. § 1101(a)(42)(A), defining the term "refugee" as "[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"

another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement, unless they can establish an exception to that bar. 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. *See Matter of Alyazji*, 25 I&N Dec. 397, 404 (BIA 2011) (“As a rule, a single statutory term should be interpreted consistently.”) (citing *Clark v. Martinez*, 543 U.S. 371, 382 (2005)). Accordingly, to determine whether the Applicant is subject to the firm resettlement bar for TPS purposes we must consider the timing of the events that gave rise to the August 3, 2021, designation of Haiti for TPS, the Applicant’s residence in Mexico, and his entry into the United States.

The relevant Federal Register notice reflects that the Secretary of Homeland Security designated Haiti on August 3, 2021, for TPS on the basis of “extraordinary and temporary conditions” including “a deteriorating political crisis, violence, and a staggering increase in human rights abuses . . . the challenges of ‘rising food insecurity and malnutrition, [. . .] waterborne disease epidemics, and high vulnerability to natural hazards, all of which have been further exacerbated by the coronavirus disease 2019 (COVID-19) pandemic.’” 86 Fed. Reg. at 41864. The notice also cites “serious security concerns” related to violent criminal gangs, as well as food insecurity and health/sanitation crises during the 2019-2021 time period. It specifically references a deterioration of safety since late November 2020, and describes numerous events that contributed to Haiti’s political crisis including an attack on political journalists, the dismissal of three supreme court justices by Haiti’s president, and human rights abuses of political protesters, all of which culminated in the July 7, 2021, assassination of the president of Haiti, Jovenel Moïse.

While the notice indicates that violence, human rights abuses, food insecurity and healthcare crisis existed simultaneously for a significant period of time prior to the Haitian TPS designation, it points to the July 7, 2021, assassination of Haiti’s President as the event that principally triggered the acute political crisis in the country. We interpret the above conditions, which converged and peaked on July 7, 2021, to constitute the events that gave rise to the TPS designation.

Because all of the conditions discussed in the Federal Register notice had arisen by July 7, 2021, it is reasonable to conclude that the firm resettlement bar applies to Haitian nationals who seek TPS under the August 3, 2021, designation, and who met all of the requirements for firm resettlement (including entry into another country and an offer of permanent resident status, or some other type of permanent resettlement) on or after July 7, 2021.

Here, the Applicant is seeking TPS under the August 3, 2021, designation. As stated, the record reflects that after departing from Haiti the Applicant traveled to Chile and then entered Mexico, where he received permanent resident status in October 2020. Moreover, there is nothing in the record to indicate that the Applicant returned to Mexico following his last entry into the United States in July 2021.

Because the record reflects that the Applicant’s grant of permanent residence in Mexico preceded the events that gave rise to the designation of Haiti for TPS on August 3, 2021, the Applicant is not subject

to the firm resettlement bar in section 244(c)(2)(B)(ii) of the Act. The sole ground for the denial of his TPS request therefore has been overcome.

Accordingly, we will return the matter to the Director to determine whether the Applicant is otherwise eligible for TPS.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.