



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

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

In Re: 24544096

Date: MARCH 21, 2023

Appeal of Potomac Service Center Decision

Form I-821, Application for Temporary Protected Status

The Applicant, a national of Venezuela 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 Potomac Service Center denied the TPS request, concluding that the Applicant was ineligible for such status because she was firmly resettled in Spain before arriving in the United States. The matter is now before us on appeal. 8 C.F.R. § 103.3.

On appeal, the Applicant submits a copy of her Venezuelan birth certificate and reasserts eligibility.

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 March 9, 2021, the Secretary of Homeland Security designated Venezuela for TPS. *See Designation of Venezuela for Temporary Protected Status and Implementation of Employment Authorization for Venezuelans Covered by Deferred Enforced Departure*, 86 Fed. Reg. 13574 (March 9, 2021).¹ The designation allows eligible Venezuelan nationals who have continuously resided in the United States since March 8, 2021, and have been continuously physically present in the United States since March 9, 2021, to apply for TPS.

¹ The designation has since been extended, most recently in September 2022. *See Extension of the Designation of Venezuela for Temporary protected Status*, 87 Fed. Reg. 55024 (September 8, 2022).

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 she is not.

The Applicant filed the instant TPS request in March 2021 representing that she last entered the United States in September 2014 with a Spanish passport under the visa waiver program (WT). The Director issued a request for evidence (RFE) asking the Applicant to submit additional information about her immigration status in any country she resided in prior to entering the United States, to explain why she did not consider herself to be firmly resettled in that country or countries, and the reasons for leaving. In response, the Applicant submitted a statement explaining that she moved to Spain in 2007 to reunite with her spouse, and that she lived and was employed there for almost eight years before arriving in the United States with her spouse and children in 2014 to seek better opportunities. The Applicant also submitted copies of her Spanish permanent resident card and her Spanish and Venezuelan passports. The Director determined that this evidence indicated the Applicant had firmly resettled in Spain before arriving in the United States and denied her TPS request on that basis.

On appeal, the Applicant states that she entered the United States with her spouse and children, who are also dual citizens of Venezuela and Spain, and that her spouse was granted TPS while her request for such status was denied. She states that she has previously provided all requested evidence and reasserts eligibility for TPS under the March 2021 Venezuelan designation.

As an initial 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),² and before their arrival in the United States entered into

² 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 designation of Venezuela for TPS, the Applicant’s residence in Spain, and her arrival in the United States.

The March 9, 2021, Federal Register notice reflects that the Secretary of Homeland Security designated Venezuela for TPS upon determination that under Nicolas Maduro’s influence the country has been in the midst of a severe political and economic crisis for several years and is currently facing a severe humanitarian emergency. The notice cites multiple reports describing Venezuela’s economic recession since 2014, collapse of basic services in the country, and allegations of atrocities since 2014; drastic worsening of the country’s health system since 2017, food insecurity, as well as crime and violence that was still rampant in the country as of January 2021. The notice specifically references the impact of a prolonged political crisis in Venezuela following a May 2018 electoral process that lacked legitimacy, but which Nicolas Maduro claimed to have won. It further describes Maduro’s control over all Venezuelan institutions (except for the opposition-controlled National Assembly) after January 2019, and the elections held in December 2020 in which Maduro’s supporters won a vast majority of seats in the National Assembly under manipulated electoral conditions, and which were rejected by the Organization of American States, many governments, and other international organizations as fraudulent. According to the notice, following the 2020 elections Maduro installed a new illegitimate purported National Assembly on January 5, 2021, cementing his control over the country.

While the notice indicates that the political, economic, health, human rights abuses, and food insecurity crises existed in Venezuela for several years, it points to Maduro’s influence over the country’s institutions as the underlying cause of the country’s severe political and economic crises, and specifically the December 2020 elections, which enabled Maduro to install the illegitimate National Assembly on January 5, 2021, and secure his control over all of the country’s institutions. We interpret these “extraordinary and temporary conditions” described in the Federal Register notice, which culminated with Maduro seizing control of the National Assembly on January 5, 2021, to be the events that ultimately gave rise to the designation of Venezuela for TPS on March 9, 2021.

Because all of the conditions discussed in the notice had arisen by January 5, 2021, when Maduro secured his control over all of the institutions in Venezuela, it is reasonable to conclude that the firm resettlement bar applies to nationals of Venezuela who seek TPS under the March 9, 2021, Venezuelan designation and who met all of the firm resettlement criteria (including entry into another country and an offer of permanent resident status, or some other type of permanent resettlement) on or after January 5, 2021.

Here, the record reflects that after departing from Venezuela the Applicant entered Spain, where she resided as a permanent resident and later citizen of Spain until arriving in the United States in September 2014. Moreover, there is nothing in the record to indicate that the Applicant returned to Spain at any time after September 2014.

Because the record reflects that the Applicant's entry into and residence in Spain as a citizen of Spain preceded the events that gave rise to the designation of Venezuela for TPS on March 9, 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.