# Practice Advisory

# Temporary Protected Status: Navigating Removal Proceedings, Dual Nationality, and Asylum

**September 2024**

Under Section 244 of the Immigration and Nationality Act (INA), the Department of Homeland Security (DHS) is authorized to grant Temporary Protected Status (TPS) to eligible nationals[1] of designated foreign states or parts of such states (or to eligible individuals who have no nationality and who last habitually resided in such designated states)[2] upon a finding that such states are experiencing ongoing civil strife, environmental disaster, or certain other extraordinary and temporary conditions. This practice pointer addresses common questions that arise for practitioners representing TPS-eligible individuals who are in removal proceedings or facing potential removal proceedings, hold dual nationality, or wish to seek asylum.[3]

## I. Seeking TPS While in Removal Proceedings

### A client is in removal proceedings, but eligible for TPS. What is the overall strategy?

Clients and their representatives should work on a strategy that furthers the client's interests. Some clients may decide to file for TPS with U.S. Citizenship and Immigration Services (USCIS) and then seek termination, dismissal, or administrative closure of removal proceedings. Others may file for TPS with USCIS but still decide to seek permanent relief, such as asylum, before the immigration court. Still others may decide to seek only permanent relief and file for TPS in the future as a late initial filing if needed. It is possible to apply for TPS for the first time during an extension of a particular country's TPS designation if certain conditions described below are met.

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[1] *See* 8 CFR § 244 (discussing the eligibility requirements for TPS).

[2] For more information on statelessness, please refer to UNHCR's resources*: Handbook on Protection of Stateless Persons,* (2014), https://www.unhcr.org/en-us/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html; *UNHCR Representing Stateless Persons Before U.S. Immigration Authorities*, (August 2017), https://www.unhcr.org/uk/59e799e04.pdf.

[3] For more information on TPS and DED generally, please refer to CLINIC's TPS and DED materials available at https://cliniclegal.org/issues/temporary-protected-status-tps-and-deferred-enforced-departure-ded.

**What are the requirements for a late initial filing of TPS?**

The individual still must independently meet all the TPS eligibility requirements, including the required period of physical presence and continuous residence. To qualify for late initial registration, the applicants must generally show that they meet one of the following conditions and must register while the condition still exists or within a 60-day period following the expiration or termination of such condition:

- The applicant was a nonimmigrant, was granted voluntary departure, or was granted relief from removal.
- The applicant had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal that was pending or subject to further review or appeal.
- The applicant was a parolee or had a pending request for re-parole.
- The applicant is the spouse an individual who is currently eligible for TPS.[4]

The exception most relevant to many individuals in removal proceedings relates to a pending asylum application. Thus, under the late initial registration provisions, it is possible for an individual who had an asylum application pending before the immigration court to forego registering during the initial TPS designation period and yet retain the ability to register during a subsequent period.

**If the client is in removal proceedings, what agency has initial jurisdiction over the TPS application?**

USCIS has initial jurisdiction. The regulations direct that a first time TPS applicant must file the application with USCIS.[5] For those in pending proceedings before the immigration judge (IJ) or Board of Immigration Appeals (BIA) at the time a foreign state is designated for TPS, the regulations state that "the alien shall be given written notice concerning Temporary Protected Status" and "shall have the opportunity to submit an application for Temporary Protected Status to [USCIS]" unless the Notice to Appear (NTA) establishes that the applicant is ineligible for TPS.[6] Similarly, USCIS also has jurisdiction over applications filed by those in removal proceedings who are eligible for late initial TPS registration.[7]

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[4] 8 CFR 244.2(f)

[5] *See* 8 CFR § 1244.7(a) ("An application for Temporary Protected Status shall be filed with the director having jurisdiction over the applicant's place of residence.").

[6] 8 CFR §§ 244.7(d), 1244.7(d)

[7] 8 CFR §§ 244.2(f)(2), 1244.2(f)(2); *see also Matter of Echeverria*, 25 I&N Dec. 512 (BIA 2011) (providing a history of the late-initial TPS registration provisions).

**When does an IJ have jurisdiction over a TPS application?**

If USCIS denies the initial TPS application, the TPS applicant is entitled to *de novo* review of the TPS application by the IJ in two scenarios:

1. Following a USCIS denial and issuance of an NTA: If USCIS denies the initial TPS application and the noncitizen is placed in removal proceedings, they have a right to a *de novo* determination by the IJ of their TPS eligibility.[8] The regulations state that, if USCIS denies an initial TPS application on a basis that constitutes a ground for deportability or inadmissibility, the denial decision "shall include an NTA setting forth such ground(s)."[9] If USCIS issues an NTA with a TPS denial, the applicant may not appeal the denial to the USCIS Administrative Appeals Office (AAO) as they would otherwise be entitled to do under the regulations at 8 CFR § 103.3.[10] In fact, if DHS files the NTA with an immigration court while an appeal is pending before the AAO, the AAO will dismiss the appeal.[11] The TPS applicant — now a respondent in removal proceedings — may renew the TPS application before the IJ.[12] If the IJ denies TPS, the respondent may appeal the denial to the BIA.[13]

2. Following a USCIS AAO dismissal: If USCIS denies TPS without issuing an NTA, the applicant's subsequent appeal to the AAO is dismissed, and USCIS issues an NTA, the noncitizen has a right to a *de novo* determination by the IJ of their TPS eligibility.[14]

**If USCIS grants TPS, how does a grant of TPS affect the client's existing removal order?**

Having a removal order is not a bar to TPS eligibility. If TPS is granted, the statute prohibits DHS from removing the individual while they have TPS, but the grant of TPS does not eliminate the removal order. Consequently, if a person's TPS expires or their TPS renewal application is denied, DHS could execute the existing removal order.

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[8] *See* 8 CFR §§ 244.18(b); 1244.18(b); 8 CFR §§ 244.10(c)(2), 1244.10(c)(2); *Matter of Lopez-Aldana*, 25 I&N Dec. 49 (BIA 2009) (holding that an applicant for TPS may seek *de novo* review by an IJ in removal proceedings, regardless of whether all appeal rights before USCIS have been exhausted); *Matter of Figueroa*, 25 I&N Dec. 596 (BIA 2011) (holding that when a respondent renews the TPS application in removal proceedings, the IJ may consider material and relevant evidence, regardless of whether the evidence was previously considered in proceedings before the USCIS).

[9] 8 CFR §§ 244.10(c)(1), 1244.10(c)(1).

[10] 8 CFR § 244.10(c)(2).

[11] 8 CFR §§ 244.18(b), 1244.18(b).

[12] 8 CFR §§ 244.11, 1244.11.

[13] *Id*.

[14] 8 CFR § 244.10(c); *see also Matter of Barrientos*, 24 I&N Dec. 100 (BIA 2007).

**If USCIS grants TPS, can a client continue to pursue permanent relief before the Executive Office for Immigration Review (EOIR)?**

Yes. New regulations issued in 2024 establish that a grant of TPS allows the IJ or BIA to terminate removal proceedings even if DHS does not join in the motion.[15] However, termination is permissive, not mandatory. As a result, if the client wishes to pursue permanent relief, like asylum, before the IJ or BIA, the grant of TPS does not prevent the client from continuing to pursue that relief. Practically speaking, however, a client who has already been granted TPS must be prepared to argue through their attorney or representative that the case should remain in immigration court. They may also have to contend with unilateral motions to dismiss filed by DHS as government attorneys and IJs try to clear their dockets.[16]

**If USCIS grants TPS, can a client file a motion to terminate with the immigration court or the BIA?**

Yes. As noted above, new regulations issued in 2024 establish that a grant of TPS allows the IJ or BIA to terminate removal proceedings even if DHS does not join in the motion.[17] In addition, an IJ or BIA member *must* terminate proceedings in cases where the parties jointly filed a motion to terminate or where one party filed a motion to terminate and the other party affirmatively indicated its non-opposition, unless the adjudicator articulates "unusual, clearly identified, and supported reasons" for denying the motion.[18]

**If a client wishes to terminate proceedings based on a grant of TPS, is it better to file a unilateral motion to terminate with EOIR or a joint motion with DHS?**

This will vary depending on the local court, IJ, and DHS counsel. The advantage to seeking DHS agreement or joinder to a motion to terminate is that the IJ generally will be *required* to grant the joint motion. The disadvantage is that in certain jurisdictions DHS can be slow to respond to requests for prosecutorial discretion, meaning that the case may remain pending in immigration court longer than it needs to. If DHS is nonresponsive or refuses to join in a motion to terminate, the representative could file a unilateral motion to terminate based on a grant of TPS. The motion should include proof that the client has been granted TPS. However, this may run a slightly higher risk of denial, depending on the court, the judge, and the factors present in a particular client's case.

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[15] 8 CFR §§ 1003.18(d)(1)(ii)(C) (IJ Motion), 8 CFR §§ 1003.1(m)(1)(ii)(C) (BIA motion).

[16] For more information on opposing unilateral motions to dismiss filed by DHS, see article by CLINIC, BIA Provides Guidance on Opposing ICE Motions to Dismiss, https://www.cliniclegal.org/resources/removal-proceedings/bia-provides-guidance-opposing-ice-motions-dismiss.

[17] 8 CFR §§ 1003.18(d)(1)(ii)(C) (IJ Motion), 8 CFR §§ 1003.1(m)(1)(ii)(C) (BIA motion).

[18] 8 CFR §§ 1003.1(m)(1)(i) (BIA motion), 1003.18(d)(1)(i) (IJ motion).

**If a client is *prima facie* eligible for TPS but has not been granted TPS yet, can they seek termination of removal proceedings?**

Yes. One option would be to seek DHS agreement to a motion to terminate based on *prima facie* TPS eligibility through a request for prosecutorial discretion. Requests for prosecutorial discretion are submitted to DHS through the procedures outlined on its website.[19] The regulations generally require IJs to grant joint motions to terminate. [20]

The 2024 DOJ regulations also allow for termination when the noncitizen demonstrates:

- *prima facie* eligibility for relief from removal, or lawful status based on a petition, application, or other action over which USCIS would have jurisdiction were the noncitizen not in removal proceedings; and
- the noncitizen has filed the petition, application, or other action with USCIS.[21]

Thus, a noncitizen seeking termination on this basis should be sure to include evidence of *prima facie* eligibility for TPS as well as a receipt notice for Form I-821, Application for Temporary Protected Status, with any motion filed to the court. The *prima facie* evidence could include evidence of nationality and evidence of continuous residence and physical presence in the United States since the TPS designation date for that country.

**The client has received a notice of intent to remove their case from the active docket based on *prima facie* eligibility for TPS. How should they proceed?**

Some individuals in active removal proceedings who are *prima facie* eligible for TPS have received notices of intent to remove their cases from the active docket in immigration court. See the sample attached to this practice advisory. If a client does not respond to the notice, the matter will be removed from the active docket. If the case is removed from the active docket, the client could in the future file any appropriate motions, such as a motion to terminate or administratively close proceedings. If a client wishes to pursue any permanent form of relief before the immigration court, they should be sure to respond to the notice within the appropriate time frame and request that the matter be kept on the court's active docket.

## II. Implications of Dual Nationality

**The client is a dual national of the TPS-designated country and another country. How will the client's dual nationality affect the TPS application?**

TPS applicants must disclose all countries of nationality or citizenship on Form I-821. While being a dual national does not prevent an applicant from meeting the nationality

[19] Doyle Memorandum: Frequently Asked Questions and Additional Instructions, https://www.ice.gov/about-ice/opla/prosecutorial-discretion.
[20] 8 CFR §§ 1003.1(m)(1)(i) (BIA motion), 1003.18(d)(1)(i) (IJ motion).
[21] 8 CFR §§ 1003.1(m)(1)(ii)(B)(BIA motion), 1003.18(d)(1)(ii)(B) (IJ motion)

requirement for TPS, it may raise questions regarding the validity of the applicant's citizenship in the TPS designated country, the applicant's "operative nationality," and/or whether the applicant was firmly resettled in a non-TPS designated country. Applicants bear the burden of proving their eligibility for TPS. Dual nationals or applicants with a permanent resident status in another country should be prepared to respond to a Request for Evidence (RFE) or a Notice of Intent to Deny (NOID) with proof that they are a national of a TPS designated country and that they are not subject to the firm resettlement bar.

**What Issues Commonly Affect Dual Nationals?**

Operative Nationality

In *Matter of Ognibene*, 18 I&N Dec. 425 (BIA 1983), the BIA reviewed the case of a dual national who initially entered the United States as a Canadian citizen but later sought treaty investor status based on his Italian citizenship. The BIA concluded that dual nationals may claim only one nationality at a time for immigration matters within the United States.[22] Because Ognibene was admitted to the United States as a Canadian, his "operative nationality" was Canadian. While he was in fact a dual national, he could not later claim Italian citizenship to receive an immigration benefit.

The Immigration and Nationality Service General Counsel's Office issued a 1992 Legal Opinion providing guidance on the eligibility of dual nationals for TPS benefits. While the opinion acknowledged that dual nationality would not strictly preclude an individual from satisfying the nationality requirement for TPS, it outlines possible approaches to resolving cases where an individual entered on the passport of a non-TPS designated country but then later sought TPS based on their other nationality. [23]

First, applying the reasoning in *Ognibene*, USCIS could hold dual nationals bound by the claim of nationality they made at the time of their admission to the United States. Alternatively, USCIS could also require applicants to affirmatively prove through submission of evidence that he or she is a national of the TPS designated country and that obtaining a second nationality did not result in the loss of citizenship in the TPS designated country. Ultimately, the opinion concludes that it is not necessary to resolve whether the threshold requirement of nationality is met, since it would not be an abuse of discretion to deny TPS in the case of a dual national.

As recently as 2020, the AAO has relied on *Matter of Ognibene* and the 1992 Gen. Co. Opinion to deny dual citizens' TPS applications.[24] In analyzing these cases, the AAO has looked at which passport the TPS applicant used to enter the United States, considered

[22] *Matter of Ognibene*, 18 I&N Dec. 425 (BIA 1983).
[23] *See* Genco Op. No 92-34 (INS) (August 7, 1992).
[24] In Re: 10923918 (AAO Nov. 20, 2020).

what nationality the individual claimed when apprehended by immigration authorities, and analyzed the citizenship and nationality laws of the relevant countries.[25]

However, in more recent AAO decisions, USCIS has declined to apply *Matter of Ognibene* and instead has focused on whether the applicant has been firmly resettled in their other country of nationality, as discussed below. While this trend could change under a different administration, it is important to note that TPS applicants have been able to overcome an "operative nationality" that does not belong to a country designated for TPS. Where USCIS raises this issue in an RFE or NOID, advocates may argue that under the plain language of the TPS statute and regulations an applicant is required to show only that he or she is a national of a TPS designated country at the time they apply for TPS. Given the humanitarian nature of TPS, it is unfair to apply *Ognibene* where an applicant is otherwise eligible.

Firm Resettlement

Referencing the asylum statute at INA § 208(b)(2)(A), the regulations state that a noncitizen who was firmly resettled in another country prior to arriving in the United States is not eligible for TPS, unless they can establish an exception to the firm resettlement bar.[26] The regulations state 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 resident status, citizenship, or some other type of permanent resettlement. . ."[27]

According to the March 29, 2012, USCIS Questions and Answers on "Designation of Syria for Temporary Protected Status," USCIS determines whether the firm resettlement bar applies on a case-by-case basis. TPS applicants may submit evidence regarding when and how they obtained their non-TPS citizenship, the nature of their family and other ties to the non-TPS country, whether they have lived in the other country, when and how long they lived in that country, dates of visits to the non-TPS country of citizenship, and any other information that the applicant believes may be relevant to the firm resettlement issue.[28]

Pursuant to the regulations, having a passport from the non-TPS country without an entry into the non-TPS country does not meet the definition of firm resettlement. The plain language of the regulations requires that the TPS applicant actually "entered into another country."[29] Therefore, if a dual national TPS applicant never entered the other

[25] *Id*., Matter of M-G-A-L-, ID# 55900 (AAO June 16, 2017).
[26] 8 CFR 208.15 (The 2020 version of this regulation is currently in effect).
[27] Matter of A-G-G-, 25 I&N Dec. 486 (BIA 2011).
[28] USCIS, Questions and Answers, Designation of Syria for Temporary Protected Status, at 2 (Mar. 29, 2012) https://www.uscis.gov/sites/default/files/document/questions-and-answers/TPS_Syria_QAs_03-29-12.pdf [Hereinafter "Syria Q and As"].
[29] 8 § CFR 208.15.

country and simply holds a passport from the non-TPS designated country, these facts should not give rise to a firm resettlement finding.

Even if the applicant has resided in the non-TPS designated country of nationality, do not assume that he or she has been firmly resettled. In two recent AAO decisions USCIS looked to the events that gave rise to the TPS designation described in the Federal Register Notice for each specific designation. Where those events occurred after an applicant had resided in another country or obtained permanent resident status there, the applicant was not considered firmly resettled.

In a June 2024 AAO decision, USCIS determined that a dual national of Syria (a TPS designated country) and Turkey who last entered the United States as a B-2 nonimmigrant with a Turkish passport was not subject to the firm resettlement bar. He resided in Turkey from September 2010 until June 2022, when he left for the United States. The AAO decision focused on the fact that his 2010 entry into Turkey preceded the events in 2012 that gave rise to the 2012 designation of Syria for TPS.[30]

A March 2023 decision involved a dual national of Venezuela and Spain who entered the United States in March 2021 with a Spanish passport under the visa waiver program. The applicant had moved to Spain in 2007 to reunite with her spouse, and she lived and worked there for almost eight years before arriving in the United States in 2014 to seek better opportunities. The AAO determined that she was not firmly resettled in Spain because she had moved there in 2007, prior to the events that gave rise to the TPS designation for Venezuela. The AAO decision referenced the severe economic and political crisis that took place over several years and culminated with Maduro seizing control of the National Assembly on March 9, 2021.[31]

Neither decision made mention of *Ognibene*, although in both cases the applicants had entered the United States under the passport of one country before seeking TPS based on their nationality in a different country.

Where a TPS applicant has resided in another country and has obtained citizenship or permanent resident status there, review the Federal Register Notice for a summary of events that gave rise to the TPS designation. Advocates should argue that the applicant's residence and citizenship/permanent legal status preceded the "extraordinary and temporary conditions" that gave rise to the TPS designation.

Exceptions to Firm Resettlement

Even if a TPS applicant is subject to the firm resettlement bar, the regulations provide for two exceptions:[32]

[30] In re: 32820991 (AAO June 4, 2024).
[31] In re: 24544096 (AAO March 21, 2023).
[32] 8 C.F.R. § 208.15 (The 2020 version of this regulation is currently in effect).

- No Significant Ties. If the TPS applicant's entry into that country was a necessary consequence of his or her flight from the conditions in the TPS country, they remained in that country only as long as was necessary to arrange onward travel, and they did not establish significant ties in that country; or
- Restrictive Conditions. If the conditions in the non-TPS country were so substantially and consciously restricted by the authority of the country that the individual was not in fact resettled.

When arguing that an exception to firm resettlement applies, include objective evidence to corroborate the claim. In one case, a national of South Sudan established that the exceptions to firm resettlement applied to her because while she was a refugee in Kenya from 1992 – 2005, she was substantially and consciously restricted by the Kenyan government. Her evidence included country conditions reports from several NGOs such as Human Rights Watch and the UNHCR. These showed that refugee movements in Kenya were restricted and that refugees were required to remain in designated refugee camps, regulated by refugee identity cards, that the government did not issue work permits to refugees, and that refugees are forced to seek employment in the informal sector.[33]

By contrast, in another case where the applicant asserted an inability to obtain employment and a bank account due to nationality-based discrimination, USCIS denied the application where the claim was only supported by the applicant's statement and letters from family and friends.[34]

Lastly, RFEs provide insight into the firm resettlement bar. For example, in a November 2017 RFE issued to a dual national applicant for Haitian TPS, USCIS requested that the applicant explain:

- The reasons for being in the other country;
- Why they left that country;
- Whether they had the same privileges provided to other persons who lived permanently in the country; and
- Any other reasons why they did not consider themselves to have been firmly resettled in the country.

In that case, the dual national TPS applicant successfully responded to the RFE by explaining that they identified as LGBTQ and that their life was severely restricted in the non-TPS country because the government of that country did not grant full rights to members of the LGBTQ community.

TPS applicants may also be able to prove their lack of privileges compared to other permanent residents by virtue of the well-documented ill treatment in the third country.

[33] In re: 10857095 (AAO Feb. 9, 2021).
[34] Matter of Y-E-M-, ID# 682229 (AAO Nov. 22, 2017).

For example, South American countries that have absorbed a large number of Venezuelan nationals have seen their societies resort to xenophobia and violence against Venezuelans in ways that suggest that Venezuelans lived in dangerous and, ultimately, restrictive conditions.[35]

**Should the client apply for TPS despite being a dual national?**

Again, being a dual national does not prevent an applicant from meeting the nationality requirement for TPS and the firm resettlement assessment is very fact-specific. Dual national TPS applicants should consider if it is in their best interest to apply for TPS and, if so, answer the question regarding country or countries of citizenship or nationality truthfully to prevent a future misrepresentation allegation and then prepare for an RFE.

## III. Asylum Considerations

**If the client is a dual national, what are some considerations for the asylum claim before the IJ?**

A TPS-eligible dual national client may want to pursue TPS and asylum simultaneously. The analysis of dual nationality is different under asylum law than for establishing TPS eligibility. As noted above, it is possible to obtain TPS despite being a dual national given that, unlike asylum, "TPS is not a provision designed to create a general right to remain in the United States" and that "[w]hether to grant TPS to an eligible alien is a matter entrusted to administrative discretion."[36] Conversely, if an asylum seeker is a citizen of two countries, they are generally not eligible for asylum in the United States unless they can demonstrate a fear of persecution in each country of citizenship. Even if the asylum seeker has never traveled to the country of dual citizenship, the claim for asylum will be barred.[37] The only exception to this general rule is in the Second Circuit, which rejected *Matter of B-R-* in a precedential decision and found that dual nationals need only show persecution in any singular country of nationality.[38]

**What are some strategic considerations if the client is pursuing asylum before the IJ?**

Whether or not a TPS-eligible respondent chooses to continue to pursue an asylum claim before the IJ will depend on considerations specific to the individual's asylum claim

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[35] Soudi Jimenez, *Venezuelan immigrants are ostracized in Colombia amid xenophobia and shifting politics*, Los Angeles Times, Oct. 27, 2023, https://www.latimes.com/california/latino-life/story/2023-10-27/venezuelans-are-ostracized-in-colombia-amid-growing-xenophobia-and-challenges-of-immigration-regularization; Matthew Bristow and Jim Wyss, *Attacks and Insults Greet Venezuelans Fleeing a Ruined Homeland*, Bloomberg, Jan. 25, 2021, https://www.bloomberg.com/news/articles/2021-01-25/attacks-and-insults-greet-venezuelans-fleeing-a-ruined-homeland?embedded-checkout=true; John Otis, *Large Venezuelan Migration Sparks Xenophobic Backlash in Colombia*, NPR News, Dec. 29, 2020, https://www.npr.org/2020/12/29/949548865/large-venezuelan-migration-sparks-xenophobic-backlash-in-colombia.

[36] *See* Genco Op. No 92-34 (INS) (August 7, 1992).

[37] *Matter of B-R-*, 26 I&N Dec. 119 (BIA 2013) (finding dual citizen of Venezuela and Spain ineligible for asylum).

[38] *Zepeda-Lopez v. Garland*, 38 F.4th 315 (2d. Cir 2022).

and case. Some respondents who are applying for TPS or were granted TPS may wish to seek administrative closure or termination of proceedings, despite being eligible for asylum. If proceedings are terminated, this also gives them the opportunity to refile for asylum with USCIS and retain the original filing date of the I-589.[39] Still others will want to pursue their claim before the IJ, particularly if they have a strong case for relief and wish the matter to be resolved quickly.

In deciding whether a TPS applicant should actively pursue asylum at the earliest opportunity or seek to postpone or terminate proceedings before the court, consider several questions:

- Legal Counsel
    - If the client does not proceed with asylum now, who would represent them in an asylum application in immigration court in the future, if it becomes necessary?
    - Does the client need advice on how to find new competent counsel if current counsel cannot represent them on the asylum claim in the future?
- Asylum Claim
    - If the client has not yet filed Form I-589, Application for Asylum and for Withholding of Removal, when is the one-year filing deadline and how can counsel ensure the client meets this deadline? Keep in mind that maintaining TPS can be considered an extraordinary circumstance excusing the untimely filing of an asylum application, but generally only if TPS is sought or obtained within the first year of entry to the United States.[40]
    - If the claim is based on political opinion, will the passage of time improve political or other conditions such that it is better to have the asylum claim adjudicated quickly?
    - Are there family members abroad, in harm's way, on whose behalf the client could file Form I-730, Asylee Relative Petition, if asylum were granted?
    - If the claim is based on domestic violence or a family relationship, how is the term "particular social group" interpreted? Is there a possibility that having the case adjudicated at a later date may mean that the law binding the IJ will have improved or worsened?
- Testimony
    - How will the passage of time affect the client's memory and ability to testify credibly?

[39] How USCIS Processes a Form I-589 Filed After Removal Proceedings are Dismissed or Terminated, https://www.uscis.gov/humanitarian/refugees-and-asylum/how-uscis-processes-a-form-i-589-filed-after-removal-proceedings-are-dismissed-or-terminated

[40] 8 C.F.R. § 208.4(a)(5)(iv); 8 C.F.R. § 1208.4(a)(5)(iv).

    - Would the client benefit from ongoing therapy before having to testify about past persecution?
- Immigration Judge
    - If the IJ's asylum grant rate is low, what are the chances that the client's case may be assigned to a different IJ if the client postpones seeking asylum?

**How does holding TPS status impact whether a client is referred to immigration court after an affirmative asylum case is not granted by the asylum office?**

If the Asylum Office denies the asylum application of an individual who is considered not to be in valid status under 8 CFR § 208.14(c)(2),[41] USCIS will issue an NTA and refer the case to the IJ, but USCIS will not refer a denied case to immigration court if the applicant has valid status. If an applicant has been granted TPS, the Asylum Office considers them to be in valid status.[42]

If the asylum applicant is in lawful status and the Asylum Office does not believe the applicant has demonstrated eligibility for asylum, the Asylum Office will issue a Notice of Intent to Deny (NOID), providing the asylum applicant 10 days, plus 6 days for mailing (a total of 16 days), to rebut the reasons for the proposed denial.[43] The Asylum Office then considers the rebuttal argument and/or evidence before it issues a final decision.[44] If the applicant continues to have TPS, and the Asylum Office finds they do are not eligible for asylum, it issues a denial of the asylum application rather than referring the applicant to the IJ.[45] While the asylum seeker will continue to have TPS, they will not be able to pursue asylum further unless they are placed in removal proceedings in the future or can meet certain criteria to seek reopening directly with the asylum office.[46]

If the Asylum Office grants asylum, it does not matter whether the applicant was in status or not at the time of the application; the applicant becomes an asylee, which is a lawful status granted for indefinite duration.

[41] 8 CFR § 208.14 (defining valid status as "an applicant who is maintaining valid immigrant, nonimmigrant, or Temporary Protected Status at the time the application is decided.").
[42] 8 CFR § 208.14(c)(2).
[43] *Id*. at 26
[44] *Id*.
[45] *Id*.
[46] *Id*.

## APPENDICES

# APPENDIX 1

NON-DETAINED

Name
Organization
Address
City/State
Phone Number

**UNITED STATES DEPARTMENT OF JUSTICE**
**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**
**IMMIGRATION COURT**
**CITY, STATE**

**OR BOARD OF IMMIGRATION APPEALS**

| | |
|---|---|
| In the Matter of:<br><br>**CLIENT NAME**<br><br>In Removal Proceedings | File No. **A number** |

Immigration Judge: Next Hearing Date:

**RESPONDENT'S MOTION TO TERMINATE BASED ON GRANT OF TEMPORARY PROTECTED STATUS**

Respondent, by and through undersigned counsel, hereby moves the Immigration Court to terminate the instant proceedings and states the following in support of this motion.

1. Respondent is a native and citizen of xx, a country currently designated for Temporary Protected Status (TPS). Respondent applied for TPS with U.S. Citizenship and Immigration Services (USCIS) on XX date, and that application has been granted. Respondent currently holds TPS until XX date, during which time he/she is protected from detention and deportation. See Form I-797, Notice of Action, confirming approval of TPS with I-94 card attached.
2. The regulations provide an Immigration Judge/Board of Immigration Appeals authority to terminate removal proceedings based on a grant of TPS. Specifically, the regulations provide discretionary authority to the Immigration Judge/Board to terminate removal proceedings when the noncitizen is a beneficiary of Temporary Protected Status, deferred action, or Deferred Enforced Departure. 8 CFR §§ 1003.18(d)(1)(ii)(C) (IJ Motion), 8 CFR §§ 1003.1(m)(1)(ii)(C) (Board motion) Note that the regulations specifically allow the IJ/Board to terminate proceedings without the consent of DHS in these circumstances.
3. Based on the fact that the Respondent currently holds TPS, he/she respectfully moves that proceedings in this case be terminated.

Sincerely,

_____
Name
Address of counsel

**UNITED STATES DEPARTMENT OF JUSTICE**
**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**
**OFFICE OF THE IMMIGRATION JUDGE**
**CITY, STATE**

**OR BOARD OF IMMIGRATION APPEALS**

In the Matter of: **RESPONDENT NAME** A-Number: **A000 000 000**

## ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the **Respondent's Motion to Terminate,** it is HEREBY ORDERED that the motion be:

[ ] **GRANTED.**

[ ] **DENIED,** because: _____

_____

_____

_____

_____ _____
Date Immigration Judge

_____

## CERTIFICATE OF SERVICE

This document was served by: [ M ] Mail; [ P ] Personal Service; [ O ] Other: _____

To: [ ] Alien; [ ] Alien c/o Custodial Officer; [ ] Alien's Atty/Rep.; [ ] DHS

Date:_____ By:_____

**CERTIFICATE OF SERVICE**

On DATE undersigned delivered a copy of the Respondent's **MOTION TO TERMINATE** to ICE via the ECAS portal. No separate service is required.

I, XXX , hereby certify that on XX date, I served a true and correct copy of the foregoing MOTION TO TERMINATE via ICE E Service OR via regular mail at XXX.

_____ DATE

Name
Address

# APPENDIX 2

NON-DETAINED

Name
Organization
Address
City/State
Phone Number

**UNITED STATES DEPARTMENT OF JUSTICE**
**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**
**IMMIGRATION COURT**
**CITY, STATE**

**OR BOARD OF IMMIGRATION APPEALS**

| | |
|---|---|
| In the Matter of:<br><br>**CLIENT NAME**<br><br>In Removal Proceedings | File No. **A number** |

Immigration Judge: Next Hearing Date:

**RESPONDENT'S MOTION TO TERMINATE BASED ON PRIMA FACIE ELIGIBILITY FOR [[TEMPORARY PROTECTED STATUS/ADJUSTMENT OF STATUS OR OTHER FORM OF RELIEF BEFORE USCIS]]**

Respondent, by and through undersigned counsel, hereby moves the Immigration Court/Board of Immigration Appeals to terminate the instant proceedings and states the following in support of this motion.

1. Respondent is a native and citizen of xx, a country currently designated for Temporary Protected Status (TPS). See evidence of nationality attached. Respondent applied for TPS with U.S. Citizenship and Immigration Services (USCIS) on XX date, and that application is currently pending. See Receipt Notice for Pending TPS application. Note that processing times for TPS applications from country XX are currently XXX months.
2. The regulations provide an Immigration Judge authority to terminate removal proceedings based on *prima facie* eligibility for relief from removal. Specifically, the regulations provide discretionary authority to the Immigration Judge to terminate removal proceedings when the noncitizen is *prima facie* eligible for relief from removal or lawful status; USCIS has jurisdiction to adjudicate the associated application; and the noncitizen has filed the application with USCIS. 8 CFR § 1003.18(d)(1)(ii)(B) (IJ motion), 8 CFR §§ 1003.1(m)(1)(ii) (Board motion). Note that the regulations specifically allow the IJ to terminate proceedings without the consent of DHS in these circumstances.
3. Respondent is *prima facie* eligible for TPS from XX country because 1) he/she is a citizen of XX country 2) he/she meets the required continuous residence and physical presence requirements and 3) no bars to TPS apply to his/her application. Please find supporting evidence attached showing Respondent's continuous residence and physical presence in the U.S. since the TPS designation as well as an

FBI background check confirming the Respondent has no disqualifying criminal history. In addition, USCIS has initial jurisdiction over TPS applications, even for those individuals in removal proceedings.

4. Based on the fact that the Respondent is *prima facie* eligible for TPS and has already filed this application with USCIS, he/she respectfully moves that removal proceedings in this case be terminated.

Sincerely,

_____
Name
Address of counsel

**UNITED STATES DEPARTMENT OF JUSTICE**
**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**
**OFFICE OF THE IMMIGRATION JUDGE**
**CITY, STATE**

In the Matter of: **RESPONDENT NAME** A-Number: **A000 000 000**

## ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the **Respondent's Motion to Terminate,** it is HEREBY ORDERED that the motion be:

[ ] **GRANTED.**

[ ] **DENIED,** because: _____

_____

_____

_____

_____

_____

_____ _____
Date Immigration Judge

_____

## CERTIFICATE OF SERVICE

This document was served by: [ M ] Mail; [ P ] Personal Service; [ O ] Other: _____

To: [ ] Alien; [ ] Alien c/o Custodial Officer; [ ] Alien's Atty/Rep.; [ ] DHS

Date:_____ By:_____

**CERTIFICATE OF SERVICE**

On DATE undersigned delivered a copy of the Respondent's **MOTION TO TERMINATE** to ICE via the ECAS portal. No separate service is required.
**[[REQUIRED FOR EROP CASES]]**

I, XXX , hereby certify that on XX date, I served a true and correct copy of the foregoing MOTION TO TERMINATE via ICE E Service OR via regular mail at XXX.
**[[REQUIRED FOR PAPER CASES]]**

_____ DATE

Name
Address

# APPENDIX 3

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
HYATTSVILLE IMMIGRATION COURT

IN REMOVAL PROCEEDINGS DATE: Mar 30, 2023

FILE NO.:

RE:

IMMIGRATION JUDGE: A

**NOTICE OF INTENT TO TAKE CASE OFF OF THE COURT'S CALENDAR**

Pursuant to 8 C.F.R. § 1003.0(b)(1)(ii) to "ensure the efficient disposition of all pending cases," including "to set priorities" for the resolution of cases, "to direct that the adjudication of certain cases be deferred," and "otherwise to manage the docket of matters to be decided" by the immigration judges, this case has been identified as one that, absent opposition, should be taken off the court's active calendar (subject to reinstatement) for the following reason(s):

[ ] The respondent has a pending application or petition with USCIS (e.g., an I-130 family based visa petition).
[ ] The respondent has a collateral petition pending with another government agency or court which, if favorably adjudicated, would confer eligibility to seek immigration benefits before USCIS (e.g., petition for guardianship in family court as a prerequisite for a Special Immigrant Juvenile petition).
[ ] The respondent is eligible to seek asylum before USCIS in the first instance (e.g., pursuant to the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008).
[ ] The respondent has an approved visa petition and is waiting for a visa number to become available (e.g., an I-140 employment-based visa petition).
[ X ] The respondent has temporary protected status (TPS) or is prima facie eligible for TPS.
[ ] The case involves a respondent who is prima facie eligible for adjustment of status under the Cuban Adjustment Act.
[ ] Other:

This case will be taken off the court's calendar on 05/30/2023, unless either party chooses to submit a written notification to the HYATTSVILLE immigration court to maintain the current date.

FILE NO.: DATE: Mar 30, 2023

This action is not a resolution of the case or adjudication of any claims raised, and the parties are not required to respond. If the case is taken off calendar, either party may obtain a new hearing date at any time by submitting a written request to the HYATTSVILLE immigration court. Upon receipt of such request, EOIR will promptly schedule a new hearing date.

To the Respondent: you must notify the immigration court and the Department of Homeland Security immediately, using Form EOIR-33, of any change of address or telephone number even while your case remains off calendar. If you fail to notify the immigration court of any change of address or telephone number and your case is scheduled for a new hearing date, you may not receive notice of the hearing and, if you fail to appear, a removal order by the immigration judge may be entered in your absence.

Certificate Of Service

This document was served:
Via: [ ] Mail | [ ] Personal Service | [ X ] Electronic Service
To: [ ] Noncitizen | [ ] Noncitizen c/o custodial officer |
[ X ] Noncitizen's atty/rep. | [ X ] DHS
By: __MJM_____ [ X ] Court Staff | [ ] Immigration Judge
Date: ___03/30/2023_____ OC

# APPENDIX 4

Name
Organization
Address

**NOT DETAINED**

**UNITED STATES DEPARTMENT OF JUSTICE**
**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**
**IMMIGRATION COURT**
**CITY, STATE**

| **IN THE MATTER OF** | **IN REMOVAL PROCEEDINGS** |
|---|---|
| Name<br>**(Respondent)** | **A# 000 000 000** |

**Judge** **Next Hearing: Date**

**RESPONDENT'S REQUEST TO MAINTAIN CASE ON ACTIVE DOCKET AND MOTION TO SET INDIVIDUAL HEARING DATE**

**UNITED STATES DEPARTMENT OF JUSTICE**
**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**
**IMMIGRATION COURT**
**CITY, STATE**

| | | |
|---|---|---|
| **IN THE MATTER OF** | * | **In removal proceedings** |
| | * | |
| Name | * | A# **000 000 000** |
| **(Respondent)** | * | |
| | * | |

**REQUEST TO MAINTAIN CASE ON ACTIVE DOCKET AND**

**SET INDIVIDUAL HEARING**

The Respondent, by and through undersigned counsel and in response to the Court notice of March 30, 2023, requests that his case be maintained on the active docket. He also moves for an Individual Hearing to be set.

1. Mr. XX timely filed for asylum with U.S. Citizenship and Immigration Services on October 2, 20xx. Respondent has been active in opposition groups in Venezuela that are opposed to the brutal dictatorship that exists in that county. Extensive documentation has already been filed that confirms Respondent's well-founded fear of persecution in Venezuela. The I-589 is already part of the court's record of proceedings.
2. USCIS did not grant Respondent's application for asylum. USCIS found him credible but determined that he lacked a well-founded fear of persecution in Venezuela.
3. Respondent's I-589 has been pending for nearly 2.5 years and he is eager to pursue his case on the merits. Respondent has already submitted written pleadings to this court. All preliminary matters in Respondent's case,

including filing the I-589 and submission of pleadings, have thus been completed.

4. In response to the Court's notice dated March 30, 2023, Respondent, through counsel, asserts his wish to maintain the case on the court's active docket. While Respondent has applied for Temporary Protected Status (TPS) from Venezuela, that application remains pending with USCIS, and no final decision has been made. Even if TPS is granted, this does not impact Respondent's ability to seek asylum before this court. *Matter of Sosa-Ventura*, 25 I&N Dec. 391 (BIA 2010) (noting that a TPS beneficiary in removal proceedings "should be provided an opportunity to apply for any relief for which she may be eligible"). Respondent wishes to exercise his statutory right to review of his asylum application following the referral by USCIS to this court.

5. We therefore respectfully request that Respondent's case be maintained on the active docket and set to an individual hearing so he can pursue his asylum claim on the merits.

Wherefore, Respondent's attorney respectfully requests that the case be maintained on the active docket and makes a motion for the the individual hearing date to be set in this matter.

_____ _____

Date

Name
Organization
Address

**UNITED STATES DEPARTMENT OF JUSTICE**
**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**
**IMMIGRATION COURT**
**City, State**

| | | |
|---|---|---|
| **IN THE MATTER OF** | * | **In removal proceedings** |
| | * | |
| Name | * | A# **000 000 000** |
| **(Respondent)** | * | |
| | * | |

## ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the MOTION TO SET INDIVIDUAL HEARING, it is HEREBY ORDERED that the motion be: **[ ] GRANTED [ ] DENIED** because:

[ ] DHS does not oppose the motion.

[ ] The respondent does not oppose the motion.

[ ] A response to the motion has not been filed with the court.

[ ] Good cause has been established for the motion.

[ ] The court agrees with the reasons stated in the opposition to the motion.

[ ] The motion is untimely per _____.

[ ] Other: The Respondent's Individual Hearing is Scheduled for _____.

Deadlines:

[ ] The application(s) for relief must be filed by _____.

[ ] The respondent must comply with DHS biometrics instructions by _____.

_____ _____

Date Immigration Judge Igoe

**Certificate of Service**

This document was served by: [ ] Mail [ ] Personal Service [ ] Electronically

To: [ ] Alien [ ] Alien c/o Custodial Officer [ ] Alien's Atty/Rep [ ] DHS

_____ _____

Date Court Staff

**UNITED STATES DEPARTMENT OF JUSTICE**
**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**
**IMMIGRATION COURT**
**CITY, STATE**

| | | |
|---|---|---|
| **IN THE MATTER OF** | * | **In removal proceedings** |
| | * | |
| Name | * | A# 000 000 000 |
| **(Respondent)** | * | |
| | * | |

**PROOF OF SERVICE**

On April 3, 2023, I served a copy of REQUEST TO MAINTAIN CASE ON ACTIVE DOCKET AND MOTION TO SET INDIVIDUAL HEARING DATE via ECAS. No separate service is required.

_____ _____

Date

Name
Organization
Address

# APPENDIX 5

U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10923918

Date: NOV. 20, 2020

Appeal of Texas Service Center Decision

Application: Form I-821, Application for Temporary Protected Status

The Applicant seeks review of a decision withdrawing her Temporary Protected Status (TPS) and denying re-registration under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a.

TPS may be withdrawn under section 244 of the Act at any time if it is determined that an applicant 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). Section 244(c)(1) of the Act and the related regulations in 8 C.F.R. § 244.2(a) provide that an applicant is eligible for TPS only upon establishing that he or she is a national, as defined in section 101(a)(21) of the Act, 8 U.S.C. § 1101(a)(21), of a foreign state designated under section 244(b) of the Act. Section 101(a)(21) of the Act provides that the term "national" means a person owing permanent allegiance to a state.

The Director of the Texas Service Center denied TPS, finding the Applicant ineligible because, although she held dual citizenship with Belize and El Salvador, her operative nationality, meaning the nationality she presented when she entered the United States was Belizean and thus, she could not be considered a citizen and national of El Salvador for U.S. immigration purposes.[1] The Director also cited to a 1992 General Counsel opinion, which concluded that the U.S. Citizenship and Immigration Services may, in the exercise of discretion, deny TPS in the case of an alien who, although a national of a foreign state designated for TPS, is also a national of another foreign state that has not been designated for TPS. The Applicant then filed a motion to reopen and reconsider the Director's decision, which was dismissed.

On appeal, the Applicant asserts that she is eligible for TPS as a dual national of El Salvador and Belize because she is a national of a TPS designated country (El Salvador) and her dual nationality does not strictly preclude her from satisfying the nationality requirement for TPS. She also asserts, without citing to any support, that the concept of operative nationality does not apply to her because she was a minor when she entered the United States and because she is not attempting to manipulate our immigration laws in claiming El Salvadoran citizenship, the General Counsel opinion should not apply in her case.

The record reflects that the Applicant, whose mother is a citizen of Belize and father is a citizen of El Salvador, was born in Belize in 1986 and resided there until the age of 10. It is not in dispute that the

[1] Belize is not a currently-designated TPS country.

Applicant is both a citizen of Belize and a citizen of El Salvador. It is also not in dispute that the Applicant was admitted to the United States in 1996 at the age of 10 years old by presenting her Belizean passport.

As stated by the Director, because the Applicant was admitted to the United States using her Belizean passport, her operative nationality is Belizean for the purposes of U.S immigration matters. See Matter of Ognibene, 18 I&N Dec. 425 (BIA 1983). The Board of Immigration Appeals concluded in Matter of Ognibene that although an alien may hold dual nationality, he or she may only claim one citizenship at a time for purposes of U.S. immigration matters, finding that a dual national alien nonimmigrant is, for the duration of his or her temporary stay in the United States, of the nationality which he or she claimed or established at the time that he or she entered the United States. Id. at 428. Furthermore, in Chee Kin Jang v. Reno, 113 F.3d 1074 (9th Cir. 1997), the Ninth Circuit Court of Appeals found that the former Immigration and Naturalization Service reasonably interpreted the term People's Republic of China (PRC) national in the Chinese Student Protection Act (CSPA) to exclude Chinese dual nationals who did not declare citizenship of the PRC when they entered the United States. Id. at 1078. The Ninth Circuit concluded that an alien is bound by the nationality claimed or established at the time of entry for the duration of his or her stay in the United States. Thus, because the Applicant claimed Belizean nationality at the time of her entry, she is bound to this nationality for the duration of her stay in the United States.

Furthermore, the Applicant does not provide any support for her proposition that the concept of operative nationality would not apply if the foreign national was a minor at the time of entry. Therefore, because the Applicant entered the United States as a national and citizen of Belize, the Director's finding that, for the purposes of U.S. immigration law (including TPS), she is a national of Belize and thus not a national of a TPS designated country, is affirmed.

The burden of proof in these proceedings rests solely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Applicant has not met that burden.

ORDER: The appeal is dismissed.

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.

U.S. Citizenship and Immigration Services

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

In Re: 32820991

Date: JUNE 4, 2024

Appeal of Vermont Service Center Decision

Form I-821, Application for Temporary Protected Status

The Applicant, a dual citizen of Syria and Turkey, seeks Temporary Protected Status under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a, as a Syrian national.

The Director of the Vermont Service Center denied the TPS request, concluding that the Applicant was ineligible for such status because he was firmly resettled in Turkey before arriving in the United States.

On appeal, the Applicant submits additional evidence 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, 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)(1) of the Act authorizes the Secretary of Homeland Security, after consultation with appropriate agencies of the U.S. Government, to designate a foreign state for TPS, 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 there.

On March 29, 2012, the Secretary of Homeland Security designated Syria for TPS. *See Designation of Syrian Arab Republic for Temporary Protected Status*, 77 Fed. Reg. 19026 (March 29, 2012).[1] The Applicant filed the instant Form I-821, Application for Temporary Protected Status (Form I-821) in November 2022, following the extension and redesignation of Syria for TPS in August 2022. *See Extension and Redesignation of Syria for Temporary Protected Status*, 87 Fed. Reg. 46982 (Aug. 1, 2022). The redesignation allows eligible Syrian nationals who do not have currently have TPS, and

[1] The Secretary of Homeland Security subsequently extended and redesignated Syria for TPS four times based on the ongoing armed conflict in the country, most recently on January 29, 2024. *See Extension and Redesignation of Syria for Temporary Protected Status*, 89 Fed. Reg. 5562 (Jan. 29, 2024).

who have continuously resided in the United States since July 28, 2022, and have been continuously physically present in the United States since October 1, 2022, to submit an initial TPS application.

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 unless they can establish an exception to the firm resettlement bar. 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).

An individual 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 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 represented on his Form I-821 that he last entered the United States as a nonimmigrant visitor for pleasure (B-2) on June 18, 2022, with a Turkish passport, and that he resided in Turkey from September 2010, through the date of his departure in June 2022. The Director issued a request for evidence (RFE) asking the Applicant to submit, in part, additional information about his immigration status in any country where he resided prior to entering the United States, to explain why he did not consider himself to be firmly resettled in that country or countries, and the reasons for leaving. The Director also asked the Applicant to submit evidence that he was not allowed to enjoy the same privileges as other persons living permanently in the same country, or evidence he believed would show that he was not firmly resettled in any other country before coming to the United States.

In response, the Applicant submitted a statement indicating that he met the second exception to the firm resettlement bar given the hostile and xenophobic attitudes towards Syrians in Turkey. He explained that while in Turkey, he experienced racial and national-origin discrimination that has affected his ability to enjoy equal employment opportunities and freedom from physical and verbal abuse by Turkish citizens. Lastly, he stated that he lived there in constant fear due to Turkish authorities arbitrarily arresting, detaining, and deporting hundreds of Syrian nationals regardless of their immigration status in the country. In support, he submitted news articles and reports describing the adverse treatment and difficult living conditions of Syrian refugee population in Turkey.

Nevertheless, the Director determined that the Applicant was firmly resettled in Turkey because he resided there from September 15, 2010, until June 18, 2022, and was granted Turkish citizenship, as evidenced by his Turkish passport issued in November 2018.

On appeal, the Applicant submits another statement[2], reiterating that since arriving in Turkey in September 2010, he endured discrimination and systemic mistreatment at the place of his employment. He explains that even obtaining Turkish citizenship did not shield him from the pervasive prejudice and hostility and, as he is not able to return to his native Syria, he is seeking TPS in the United States.

As an initial matter, the firm resettlement bar for TPS 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. In the asylum context, U.S. Citizenship and Immigration Services (USCIS) applies the firm resettlement bar to asylees who, after becoming refugees (that is, 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 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. Therefore, 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 e.g., Matter of Alyazji*, 25 I&N Dec. 397, 404 (BIA 2011) (stating that "[a]s 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 2012 designation of Syria for TPS, the Applicant's arrival and residence in Turkey, and his entry into the United States.

The USCIS notice published in the Federal Register on March 29, 2012, reflects that the Secretary of Homeland Security designated Syria for TPS on the basis of "extraordinary and temporary conditions" resulting from the Syrian Arab Republic Government's (SARG) violent suppression and killing thousands of its own civilians in response to political protests against the rule of President Bashar al-Assad that took place in the country's capital from mid to late March 2011. The reasons for the designation stated in the notice included SARG's subsequent mobilization of the military, use of excessive force against civilians, arbitrary executions, killing and persecution of protestors and members of the media, arbitrary detentions, disappearances, torture, and ill-treatment in an effort to retain control of the country. The notice cites the United Nations Human Rights Council commissions' reports that the conflict has become increasingly violent and militarized and that as of February 2012 thousands of Syrians have been killed, displaced, or trapped in affected areas within Syria, while others have sought shelter in neighboring countries. It further provides that the regime's economic mismanagement and the sanctions imposed by the international community in response to the crisis have negatively affected the whole country's economy, resulting in substantial increase of food prices and collapse of tourist industry, as well as many Syrians being uprooted from their communities or

[2] The Applicant also submits several documents in Turkish; however, as they are not accompanied by a certified English translation, we are unable to assess their evidentiary weight. *See* 8 C.F.R. § 103.2(b)(3) (providing that any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English).

[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 . . . ."

entrapped in danger zones. The notice explains that the deteriorating security situation in Syria compelled the United States to suspend Embassy operations on February 6, 2012, and order the departure of all U.S. direct-hire personnel from the country, and that several other diplomatic missions have also suspended operations due to security concerns. The notice emphasizes that the U.S. Department of State has issued several travel advisories since April 2011 urging all U.S. citizens to either avoid travel to Syria or to depart the country immediately, reiterating their travel warning on March 6, 2012.

We interpret these "extraordinary and temporary conditions" described in the Federal Register notice, which led to the closing of the U.S. Embassy in Syria on February 6, 2012, to be the events that ultimately gave rise to the designation of Syria for TPS on March 29, 2012.

Because all of the conditions discussed in the Federal Register, beginning with the military suppression of the political protests in early 2011, the resulting killings and displacement of thousands of Syrian nationals, economic collapse, and deterioration of security situation, which forced the United States to suspend Embassy operations and order departure of its personnel, had arisen by February 6, 2012, it is reasonable to conclude that the firm resettlement bar applies to Syrian TPS applicants who met all the requirements for firm resettlement (that is, entry into another country and an offer of indefinite status, or some other type of permanent resettlement) on or after February 6, 2012.

Here, because the Applicant's 2010 entry into Turkey preceded the events that that gave rise to the 2012 designation of Syria for TPS, 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.

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 he 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 whys 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 county'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.

U.S. Citizenship and Immigration Services

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

MATTER OF M-G-A-L-

DATE: JUNE 16, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

APPLICATION: FORM I-821, APPLICATION FOR TEMPORARY PROTECTED STATUS

The Applicant, who claims that she is a national of El Salvador, seeks Temporary Protected Status (TPS). *See* Immigration and Nationality Act (the Act) section 244, 8 U.S.C. § 1254a. TPS provides lawful status and protection from removal for foreign nationals, of specifically designated countries, who register during designated periods, satisfy country-specific continuous residence and physical presence requirements, are admissible to the United States, are not firmly resettled in another country, and are not subject to certain criminal- and security-related bars.

The Director of the Vermont Service Center denied the TPS application, concluding that the Applicant was arrested for wrongfully obtaining public assistance and she did not submit documentation sufficient to establish that she was not convicted of this offense.

On appeal, the Applicant submits additional evidence and asserts that she has not been convicted of a crime that would render her ineligible for TPS.

Upon *de novo* review, we will remand the matter to the Director for further proceedings consistent with this decision.

## I. LAW

An applicant for TPS must establish that he or she is a national of a foreign state designated under section 244(b) of the Act, or, in the case of an applicant having no nationality, is a person who last habitually resided in a designated state. Section 244(c)(1)(A) of the Act, 8 C.F.R. § 244.2(a).

An individual is ineligible for TPS if he or she has been convicted of any felony or two or more misdemeanors committed in the United States. Section 244(c)(2)(B) of the Act. Department of Homeland Security (DHS) regulations define *felony* as a crime "punishable by imprisonment for a term of more than one year, regardless of the term actually served," with the exception of an offense defined by the State as a misdemeanor where the sentence actually imposed is one year or less regardless of the term actually served, which is treated as a misdemeanor. 8 C.F.R. § 244.1. DHS regulations define *misdemeanor* as a crime "either: (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) A crime treated as a misdemeanor under the term 'felony' of this section." 8 C.F.R. § 244.1. That regulation further

provides that "any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a felony or misdemeanor."

The Act provides two definitions of conviction: 1) a formal judgment of guilt entered by a court, or 2) if adjudication of guilt has been withheld, where a judge or jury has found the person guilty or the person has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, *and* the judge has ordered some form of punishment, penalty, or restraint on the person's liberty. Section 101(a)(48)(A) of the Act.

The burden of proof is on the applicant to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Applicants shall submit all documentation as required in the instructions or requested by U.S. Citizenship and Immigration Services. 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 the burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from the Applicant's own statements. *Id.*

## II. ANALYSIS

The Director denied the application because the Applicant did not submit requested documentation showing that she was not convicted of wrongfully obtaining public assistance. On appeal, the Applicant presents court documents demonstrating that she has not been convicted of this offense. However, we issued a notice of intent to dismiss (NOID) based on evidence in the record indicating that the Applicant is ineligible for TPS because she is a national of Mexico. In response to the NOID, the Applicant asserts that she is also a national of El Salvador and that her dual nationality does not render her ineligible for TPS. Upon review of the record, we find that the Applicant has not demonstrated that she is a national of El Salvador, and will remand the matter for further proceedings consistent with this decision.

### A. Wrongfully Obtaining Public Assistance

A Federal Bureau of Investigation report based upon the Applicant's fingerprints reflects that in 2009 she was arrested and charged in [redacted] under Minnesota Statutes § 256.98 with wrongfully obtaining assistance-theft and the disposition was "held." This offense is punishable as either a felony or misdemeanor for TPS purposes. *See* 8 C.F.R. § 244.1. The Applicant states that she was detained on probable cause for wrongfully obtaining public assistance by the [redacted] Jail, but that she was not arrested or charged. In support of the Applicant's assertions, the record contains: 1) a letter from the [redacted] Sheriff's Office stating there is no arrest record for the Applicant in their records management system and that the [redacted] Attorney's Office could provide information on whether the Applicant was charged; 2) a letter from the [redacted] Attorney's Office, which states that they were unable to find records matching the Applicant's name and date of birth; and it does not appear that the incident was referred to their office for charging consideration; and 3) a search of the Minnesota Public Criminal History database reflecting that

there are no public data matches for the Applicant. Overall, we find that the Applicant has satisfied her burden of demonstrating that she was not convicted of wrongfully obtaining public assistance. Accordingly, we find no evidence to support a conclusion that the Applicant is ineligible for TPS under section 244(c)(2)(B) of the Act for convictions of two misdemeanors or one felony.

B. Evidence of Salvadoran Nationality

Although the Applicant has overcome the basis for denial, we find that the Applicant still has not established her eligibility for TPS because the record does not contain evidence of her Salvadoran nationality. Acceptable evidence of identity and nationality may consist of a passport, a birth certificate accompanied by photo identification, or any national identity document from the foreign national's country of origin bearing a photo, fingerprint, or both. 8 C.F.R. § 244.9(a). If these documents are unavailable, an applicant must file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. *Id.* A personal interview before an immigration officer shall be required for each applicant who does not provide documentary proof of identity or nationality. *Id.*

The record contains a 2010 affidavit from the Applicant in which she stated that her mother is Salvadoran and her father is Mexican. With her initial TPS filing, the Applicant asserted that pursuant to the Constitution of El Salvador, she acquired Salvadoran citizenship through her mother. However, the record does not contain a passport, birth certificate with photo identification, or a national identity document from El Salvador. The only evidence of the Applicant's identity and nationality in the record consists of her Mexican birth certificate and passport, reflecting that she was born in Mexico and is a national of Mexico. Although the Applicant has asserted that she is eligible to acquire Salvadoran citizenship through her mother, she has not demonstrated with primary evidence that she has actually acquired such citizenship. Nor has she submitted an affidavit showing proof of unsuccessful efforts to obtain identity documents from the consulate of El Salvador. 8 C.F.R. § 244.9(a). Accordingly, we will remand the matter to the Director for the scheduling of a personal interview before an immigration officer. During this interview the Applicant may show proof of unsuccessful efforts to obtain identity and nationality documents and present any secondary evidence that she feels would be helpful in showing nationality. *Id.*

We note that even if the Director determines that the Applicant is a national of El Salvador, TPS is a discretionary benefit and the Director may deny the Applicant's TPS because she is also a national of Mexico. This conclusion is supported by a General Counsel opinion from the former Immigration and Naturalization Service, which states that the Service may, in the exercise of discretion, deny TPS in the case of a foreign national who, although a national of a foreign state designated for TPS, is also a national of another foreign state that has not been designated for TPS. GENCO Op. 92-34, 1992 WL 1369373 (August 7, 1992). The General Counsel opinion explains that, "TPS is not a provision designated to create a general right to remain in the United States. Rather, the statute provides a regularized means of granting haven to aliens who, because of extraordinary and temporary circumstances, cannot return to their home country in safety." *Id.* Unlike El Salvador,

Mexico is not a foreign state that has been designated for TPS. The circumstances that resulted in the designation of El Salvador for TPS do not prevent the Applicant from returning safely to Mexico. Accordingly, denying the Applicant TPS would not frustrate the statutory purpose of the benefit. *Id.*

## III. CONCLUSION

The Applicant has overcome the basis for denial of her application. However, we find as an additional ground of ineligibility that she has not established her Salvadoran nationality. We will remand the matter for the scheduling of an interview before an immigration officer to establish the Applicant's nationality, and also to determine if she merits TPS as a matter of discretion.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of M-G-A-L-*, ID# 55900 (AAO June 16, 2017)