



U.S. Citizenship
and Immigration
Services

MA-1

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 23 2004

IN RE: Applicant: [Redacted]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

Administrative Appeals Office
U.S. Citizenship and Immigration Services
[Faint stamp]

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

The director denied the application because the applicant failed to establish that she is a national of a foreign state designated by the Attorney General and eligible for the granting of Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254. The director determined that the applicant is a citizen and national of Guatemala and that country has not been so designated under section 244 of the Act.

The applicant, on appeal claims that she is a national of Honduras. She states that she does not have copies of the paperwork she initially filed. The applicant claims there must have been an error, and she states "it might be" that the application shows that she is a citizen of Guatemala. In support of her effort to establish her true nationality, the applicant submits a copy of her Honduran birth certificate, with English translation, and a copy of her Honduran national identity card. The applicant also submits copies of birth certificates for two of her U.S.-born children, which state that the applicant was born in Honduras.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2(a), provide that an applicant is eligible for temporary protected status only if such alien establishes that he or she:

Is a national, as defined in section (101)(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;....

An applicant must establish eligibility for temporary protected status at the time the application was filed. C.F.R. § 103.2(b)(12).

The applicant states on appeal that she may have made a mistake on a previous application by stating her nationality as Guatemalan. The record reflects that the applicant filed her initial application for TPS on August 13, 1999. The applicant stated on the Form I-821, Application for Temporary Protected Status, that she was born in Honduras on August 4, 1965, and she stated that she is a citizen of Honduras.

The director, however, found that the applicant had stated on her asylum application that she was born in Guatemala, and she stated her citizenship as Guatemalan. The director determined that the applicant had failed to establish that she is a national of a foreign state designated by the Attorney General and eligible for the granting of TPS under section 244 of the Act.

The record of proceeding contains a Form I-589, Request for Asylum in the United States, filed by the applicant on December 16, 1993. The applicant stated on the application that she was born in Guatemala on August 4, 1965, and that her nationality was Guatemalan. In addition, the applicant also submitted a Form G-325A, Biographic Information, with her asylum application, on which she again stated her country of birth as Guatemala, and her nationality as Guatemalan. The applicant stated on the Form G-325A, that her parents were Guatemalan, two of her children were born in Guatemala, and that she resided in Guatemala from 1965 to July 1986, when she came to the United States. The applicant provided a lengthy account of the reason she

was applying for asylum, and she declared under penalty of perjury that the information she provided was true and correct. The record does not indicate if any final action was taken on the asylum application.

The United States Court of Appeals, in *Chee Kin Jang v. Reno*, 113 F.3d 1074 (9th Cir. 1997) found that the Service reasonably interpreted the term “PRC national” in CSPA (Chinese Student Protection Act) to exclude Chinese dual nationals who did not declare citizenship of PRC (People’s Republic of China) when they entered the United States, and that the Service’s treatment of PRC dual nationals, depending on whether they entered under a PRC passport or a passport of a different country, was reasonable. The Court states 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, a dual national CSPA principal applicant must have claimed PRC nationality at the time of his or her last entry into the United States.

In *Chevron USA, Inc. v. Natural Resources Defense Counsel*, 467 U.S. 837, 842-843 & n.9 (1984), the district court held that the practice of binding an alien to his claimed nationality “promotes the congressional policy of insuring that an alien will be able to return, voluntarily or otherwise, to his or her country of origin if requested to do so and provides for consistency in the enforcement of law, especially given the large numbers of nonimmigrant foreign nationals who visit the United States each year.”

Additionally, the Board of Immigration Appeals (BIA), in *Matter of Ognibene*, 18 I&N Dec. 425 (BIA 1983), held that under appropriate circumstances in a given proceeding of law, the operative nationality of a dual national may be determined by his conduct without affording him the opportunity to elect which of his nationalities he will exercise. The General Counsel in GENCO Op. 84-22 (July 13, 1984), reinforced this concept and states, “In interpreting a law which turns on nationality, the individual’s conduct with regard to a particular nation may be examined. An individual’s conduct determines his ‘operative nationality.’ The ‘operative nationality’ is determined by allowing the individual to elect which nationality to exercise. The nationality claimed or established by the nonimmigrant alien when he enters the United States must be regarded as his sole nationality for the duration of his stay in the United States.” (Emphasis in original).

The nationality the applicant claimed at the time she first came into contact with CIS was that of Guatemala. Although the issue of dual nationality is not at question in this proceeding, the record is clear in establishing that the applicant elected to present herself as a national of Guatemala to the United States government at the time she filed her application for asylum.

Guatemala is not a designated foreign state under Section 244 of the Act. The applicant, therefore, does not meet the eligibility requirements of being a national of a state designated under section 244(b) of the Act. Accordingly, as the applicant has not demonstrated that her “operative nationality” is that of a TPS-designated country, the director’s decision to deny the application on this ground will be affirmed, as a matter of discretion.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of § 244 of the Act. The applicant has failed to meet this burden.



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ORDER: The appeal is dismissed.